

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

NADEZDA STEELE-WARRICK, individually and on behalf of all others similarly situated,  Plaintiff  vs.  MICROGENICS CORPORATION AND THERMO FISHER SCIENTIFIC INC.,  Defendants	Hon. Vera M. Scanlon  CASE 1:19-cv-06558-VMS  <b>DECLARATION OF NATHAN J. MARCUSEN IN SUPPORT OF DEFENDANT MICROGENICS CORPORATION'S MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED CLASS ACTION COMPLAINT AND TO STRIKE CLASS ALLEGATIONS</b>
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I, the undersigned, Nathan J. Marcusen, declare as follows under 28 U.S.C. § 1746:

1. I am an attorney at Bowman and Brooke LLP and am one of the attorneys for Defendant Microgenics Corporation in this case. I am over 18 years of age, am fully competent to make this affidavit, and do so on personal knowledge.

2. Attached as Exhibit 1 is a compilation of Contract No. CC161458 and all corresponding appendices, some of which were produced by the New York State Department of Corrections and Community Supervision ("DOCCS") in response to subpoenas issued in this litigation. Slip sheets separating the appendices were added for ease of reference.

3. Attached as Exhibit 2 is a true and correct copy of DOCCS Directive No. 9432, publicly available at <https://doccs.ny.gov/system/files/documents/2019/07/9432.pdf> (last accessed Apr. 24, 2020).

4. Attached as Exhibit 3 is a true and correct copy of DOCCS Directive No. 2115, publicly available at <https://doccs.ny.gov/system/files/documents/2019/08/2115%20Drug%20Tests%20for%20Employees.pdf> (last accessed Apr. 24, 2020).

5. Attached as Exhibit 4 is a true and correct copy of DOCCS Directive No. 4937, publicly available at <https://doccs.ny.gov/system/files/documents/2019/08/4937%20Urinalysis%20Testing.pdf> (last accessed Apr. 24, 2020).

6. Attached as Exhibit 5 is a true and correct copy of 510(k) Substantial Equivalence Determination Decision Summary, 510(k) Number k110035, publicly available at [http://www.accessdata.fda.gov/cdrh\\_docs/reviews/K110035](http://www.accessdata.fda.gov/cdrh_docs/reviews/K110035) (last accessed Apr. 24, 2020).

7. Attached as Exhibit 6 is a true and correct copy of 510(k) Substantial Equivalence Determination Decision Summary, 510(k) Number k163101, publicly available at [http://www.accessdata.fda.gov/cdrh\\_docs/reviews/K163101](http://www.accessdata.fda.gov/cdrh_docs/reviews/K163101) (last accessed Apr. 24, 2020).

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 24<sup>th</sup> day of April 2020, at Minneapolis, Minnesota.

s/Nathan J. Marcusen  
Nathan J. Marcusen

# **EXHIBIT 1**

# STATE OF NEW YORK AGREEMENT

<u>STATE AGENCY (Name &amp; Address):</u>  New York State Department of Corrections and Community Supervision The Harriman State Campus 1220 Washington Avenue Albany, New York 12226	<u>BUSINESS CODE:</u> DOC01  <u>NYS COMPTROLLER'S NUMBER</u> CC161458  <u>DEPARTMENT CODE:</u> 3250226
<u>CONTRACTOR (Name &amp; Address)</u>  Microgenics Corporation 46500 Kato Road Fremont CA 94538	<u>TYPE OF PROGRAM (S):</u>  Urinalysis Analyzers for Correctional Facilities
<u>FEDERAL TAX IDENTIFICATION NUMBER</u>  680418167  <u>NYS VENDOR ID NUMBER</u>  1000009626	<u>INITIAL CONTRACT PERIOD</u>  FROM: September 1, 2018  TO: August 31, 2023  <u>FUNDING AMOUNT FOR INITIAL PERIOD NOT TO EXCEED</u>  <div style="background-color: black; color: red; padding: 2px; text-align: center; font-weight: bold;">REDACTED</div>

## APPENDICES ATTACHED AND PART OF THIS AGREEMENT:

<u>  X  </u>	APPENDIX A	Standard Clauses for New York State Contracts
<u>  X  </u>	APPENDIX B	Appendix B General Specifications
<u>  X  </u>	APPENDIX C	Invitation for Bids 2018-06
<u>  X  </u>	APPENDIX D	Bid Cost Sheet
<u>  X  </u>	APPENDIX E	Vendor Assurance of Non-Conflict or Detrimental Effect
<u>  X  </u>	APPENDIX F	Non-Disclosure Agreement
<u>  X  </u>	APPENDIX G	M/WBE and EEO Policy Statement
<u>  X  </u>	APPENDIX H	Contractor's Bid

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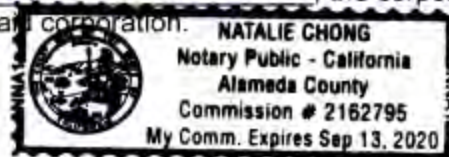


IN WITNESS THEREOF, the parties hereto have executed or approved this AGREEMENT on the dates below their signatures.

<b>CONTRACTOR</b> Microgenics Corporation  By: <u>Carol Bowers</u>  <u>Carol Bowers</u> Printed Name  Title: <u>Sr. Finance Director / CDD Niche</u>  Date: <u>6/18/18</u>	Contract No. <u>CC161458</u>  <b>STATE AGENCY</b> <u>New York State Department of Corrections and</u> <u>Community Supervision</u>  By: <u>Melissa McLaughlin</u>  <u>Melissa McLaughlin</u> Printed Name  Title: <u>Director of Budget and Finance</u>  Date: <u>7/6/18</u>  State Agency Certification "In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract."
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STATE OF California )  
County of Alameda ) SS.:  
On the 18<sup>th</sup> day of June, 2018, before me personally appeared Carol E. Bowers, to me known, who being by me duly sworn, did depose and say that he/she <sup>works</sup> resides at ThermoFisher Scientific 46500 Kato Rd Fremont CA, that he/she is the Sr. Finance Director of the ThermoFisher- CDD Microgenics, the corporation described herein which thereto by order of the board of directors of said corporation.

(Notary) NATALIE CHONG  
Natalie Chong



ATTORNEY GENERAL'S SIGNATURE

APPROVED AS TO FORM NYS ATTORNEY GENERAL
Title: <u>JUL 30 2018</u>
Date: <u>Benjamin L. Maggi</u> BENJAMIN L. MAGGI ASSISTANT ATTORNEY GENERAL

STATE COMPTROLLER'S SIGNATURE

APPROVED DEPT. OF AUDIT & CONTROL
Title: <u>OCT 09 2018</u>
Date: <u>William D. Hughes</u> FOR THE STATE COMPTROLLER

## **AGREEMENT**

This AGREEMENT made this \_\_\_\_ day of June, 2018 between the NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION (hereinafter referred to as "DOCCS"), with its principal office located at The Harriman State Campus, 1220 Washington Avenue, Albany, New York 12226 and Microgenics Corporation (hereinafter "CONTRACTOR"), with its principal office located at 46500 Kato Road, Fremont, CA 94538 for Urinalysis Analyzers at DOCCS 52 Correctional Facilities, and

WHEREAS, pursuant to New York Correction Law § 112(1), the Commissioner of DOCCS is given the authority to contract with private entities for the performance of such functions deemed necessary or desirable to promote the efficient operation of DOCCS, as well as the fulfillment of all lawful responsibilities of DOCCS; and

WHEREAS, the CONTRACTOR is ready, willing and able to provide such services and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform or have performed the services required pursuant to the terms of this AGREEMENT; and

NOW THEREFORE, in consideration of the promises, responsibilities and covenants herein, the STATE and the CONTRACTOR agree as follows:

### **I. TERM**

A. When signed by the parties and approved by all necessary government agencies, this AGREEMENT shall commence on September 1, 2018, and continue for five (5) years from the commencement date ("Term") unless terminated earlier pursuant to its terms.

### **II. AMENDMENTS**

A. This AGREEMENT may be amended only upon the mutual written agreement of the parties.

B. To modify the AGREEMENT within an existing Term or Renewal Term, the parties shall execute an amendment to the agreement. Any change in the amount of consideration to be paid, change in scope, or change in the term, is subject to the approval of the Office of the State Comptroller.

C. Any such amendment to or extension of this AGREEMENT shall be subject to approval by the Office of the State Comptroller ("OSC") and where necessary as set forth in Section X(A) below, shall contain a new budget.

### **III. SUBCONTRACTING**

A. The CONTRACTOR agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of the DOCCS. Approval shall not be unreasonably withheld upon receipt of written request to subcontract.

The CONTRACTOR may arrange for a portion/s of its responsibilities under this AGREEMENT to be subcontracted to qualified, responsible subcontractors, subject to approval of the DOCCS. If the CONTRACTOR determines to subcontract a portion of the services, the subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance under this AGREEMENT must be fully explained by the CONTRACTOR to the DOCCS. As part of this explanation, the subcontractor must submit to the DOCCS a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form, as required by the CONTRACTOR prior to execution of this AGREEMENT.

The CONTRACTOR retains ultimate responsibility for all services performed under the AGREEMENT.

All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of this AGREEMENT

including, but not limited to, the body of this AGREEMENT, Appendix A – Standard Clauses for New York State Contracts, Appendix B–General Specifications, and Appendix C–IFB 2018-06. Unless waived in writing by the DOCCS, all subcontracts between the CONTRACTOR and subcontractors shall expressly name the STATE, through DOCCS, as the sole intended third party beneficiary of such subcontract. The DOCCS reserves the right to review and approve or reject any subcontract, as well as any amendment to said subcontract(s), and this right shall not make the DOCCS or the STATE a party to any subcontract or create any right, claim, or interest in the subcontractor or proposed subcontractor against the DOCCS.

The DOCCS reserves the right, at any time during the term of the AGREEMENT, to verify that the written subcontract between the CONTRACTOR and subcontractors is in compliance with all of the provisions of this Section and any subcontract provisions contained in this AGREEMENT.

The CONTRACTOR shall give the DOCCS immediate notice in writing of the initiation of any legal action or suit which relates in any way to a subcontract with a subcontractor or which may affect the performance of the CONTRACTOR's duties under the AGREEMENT. Any subcontract shall not relieve the CONTRACTOR in any way of any responsibility, duty and/or obligation of the AGREEMENT.

If at any time during performance under this AGREEMENT total compensation to a subcontractor exceeds or is expected to exceed **REDACTED**, that subcontractor shall be required to submit and certify a Vendor Responsibility Questionnaire.

#### **IV. TERMINATION**

A. DOCCS shall have the right to terminate this AGREEMENT early for (i) unavailability of funds or (ii) convenience provided that the DOCCS has given written notice to the CONTRACTOR no later than thirty (30) days or more prior to the date of termination.

B. DOCCS may terminate the AGREEMENT for cause immediately upon written notice of termination to the CONTRACTOR, if the CONTRACTOR fails to comply with the terms and conditions of this AGREEMENT and/or with any laws, rules, regulations, policies or procedures affecting this AGREEMENT.

C. DOCCS may terminate this AGREEMENT without cause by thirty (30) days prior written notice. In the event of such termination, the parties will adjust the accrued amount due and the CONTRACTOR will undertake no additional expenditures not already required.

D. This AGREEMENT may be terminated at any time upon mutual written consent of DOCCS and the CONTRACTOR.

E. DOCCS reserves the right to terminate this AGREEMENT in the event it is found that the certification filed by the CONTRACTOR in accordance with New York State Finance Law Sections 139-j and 139-k was intentionally false or intentionally incomplete. Upon such finding, DOCCS may exercise its termination right by providing written notification to the CONTRACTOR in accordance with the written notification terms of this AGREEMENT.

F. In the event of the termination of this AGREEMENT by either party, DOCCS shall be liable for the actual and necessary expenses for services provided by CONTRACTOR up to and including the effective date of termination.

## **V. CONTRACTOR RESPONSIBILITY**

A. The CONTRACTOR shall, at all times during the AGREEMENT term remain responsible. The CONTRACTOR agrees, if requested by the Commissioner of DOCCS or his designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

B. The Commissioner of DOCCS or his designee, in his sole discretion, reserves the right to suspend any or all activities under this AGREEMENT, at any time, when he discovers information that calls into question the responsibility of the CONTRACTOR. In the event of such suspension, the CONTRACTOR will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the CONTRACTOR must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of DOCCS or his designee issues a written notice authorizing a resumption of performance under the Contract.

C. Upon written notice to the CONTRACTOR, and a reasonable opportunity to be heard with appropriate DOCCS officials or staff, the AGREEMENT may be terminated by the Commissioner of DOCCS or his designee at the CONTRACTOR'S expense where the CONTRACTOR is determined by the DOCCS Commissioner or his designee to be non-responsible. In such event, the Commissioner or his designee may complete the contractual requirements in any manner he may deem advisable and pursue available legal or equitable remedies for breach.

## **VI. CONFLICTS OF INTEREST**

A. The CONTRACTOR has provided a form (Vendor Assurance of No Conflict of Interest or Detrimental Effect), signed by an authorized executive or legal representative attesting that the CONTRACTOR's performance of the services does not and will not create a conflict of interest with, nor position the CONTRACTOR to breach any other contract currently in force with the State of New York, that the CONTRACTOR will not act in any manner that is detrimental to any STATE project on which the CONTRACTOR is rendering services.

B. The CONTRACTOR hereby reaffirms the attestations made in its proposal and covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent the CONTRACTOR's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this

AGREEMENT. The CONTRACTOR shall have a duty to notify the DOCCS immediately of any actual or potential conflicts of interest.

C. In conjunction with any subcontract under this AGREEMENT, the CONTRACTOR shall obtain and deliver to the AGENCY, prior to entering into a subcontract, a Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative of the subcontractor. The CONTRACTOR shall also require in any subcontracting agreement that the subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to the AGENCY a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form for each of its subcontractors prior to entering into a subcontract.

D. The AGENCY and the CONTRACTOR recognize that conflicts may occur in the future because the CONTRACTOR may have existing, or establish new, relationships. The AGENCY will review the nature of any relationships and reserves the right to terminate this AGREEMENT for any reason, or for cause, if, in the judgment of the AGENCY, a real or potential conflict of interest cannot be cured.

## **VII. PUBLIC OFFICERS LAW**

A. Contractors, consultants, vendors, and subcontractors may hire former State Agency or Authority employees. However, as a general rule and in accordance with New York Public Officers Law, former employees of the State Agency or Authority may neither appear nor practice before the State Agency or Authority, nor receive compensation for services rendered on a matter before the State Agency or Authority, for a period of two years following their separation from State Agency or Authority service. In addition, former State Agency or Authority employees are subject to a "lifetime bar" from appearing before the State Agency or Authority or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with the State Agency or Authority.

## **VIII. ETHICS REQUIREMENTS**

A. The Contractor and its Subcontractors shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively, the "Ethics Requirements"). The Contractor certifies that all of its employees and those of its Subcontractors who are former employees of the State and who are assigned to perform services under this Contract shall be assigned in accordance with all Ethics Requirements. During the Term, no person who is employed by the Contractor or its Subcontractors and who is disqualified from providing services under this Contract pursuant to any Ethics Requirements may share in any net revenues of the Contractor or its Subcontractors derived from this Contract. The Contractor shall identify and provide the State with notice of those employees of the Contractor and its Subcontractors who are former employees of the State that will be assigned to perform services under this Contract, and make sure that such employees comply with all applicable laws and prohibitions. The State may request that the Contractor provide it with whatever information the State deems appropriate about each such person's engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The State shall have the right to withdraw or withhold approval of any Subcontractor if utilizing such Subcontractor for any work performed hereunder would be in conflict with any of the Ethics Requirements. The State shall have the right to terminate this Contract at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.

## **IX. INVITATION FOR BIDS (IFB) AND AWARD**

A. DOCCS has determined that Microgenics Corporation is the successful bidder and that CONTRACTOR is willing and able to provide the services required.



B. CONTRACTOR shall provide urinalysis analyzers to DOCCS Correctional Facilities located throughout New York State in accordance with DOCCS IFB 2018-06, a true copy of which is annexed hereto and made a part hereof as Appendix C; and the proposal for said bid submitted by CONTRACTOR, a true copy of which is annexed hereto and made a part of as Appendix H.

#### **X. SCOPE OF SERVICES**

A. Pursuant to this AGREEMENT, CONTRACTOR shall provide the services set forth herein and in Appendix C, IFB 2018-06, contains a description of the services to be provided by CONTRACTOR.

B. It is expressly understood and agreed by CONTRACTOR that any and all services and products specified in this AGREEMENT shall be provided only at the direction of DOCCS.

#### **XI. COMPENSATION**

A. All compensation that will be paid to the CONTRACTOR is set forth in Appendix D which is attached hereto and made a part of hereof. Appendix D consists of the Bid Cost Sheet.

B. Throughout the term of this AGREEMENT, CONTRACTOR shall be reimbursed only for actual and necessary expenses for services actually performed in accordance with this AGREEMENT and with Appendices C and H.

C. CONTRACTOR acknowledges that all invoices shall be submitted to the following address:

Department of Corrections and Community Supervision  
Unit ID: 3250226  
c/o NYS OGS Business Services Center  
P.O. Box 2117  
Albany, NY 12220-0117

D. CONTRACTOR shall provide complete and accurate billing invoices to the DOCCS in order to receive payment. Billing invoices submitted to the DOCCS must contain all information and supporting documentation required by the Contract, DOCCS, and OSC. Payment for invoices submitted by the CONTRACTOR shall only be rendered electronically unless payment by paper check is expressly authorized by the DOCCS Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The CONTRACTOR shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), by e-mail at [epundit@osc.state.ny.us](mailto:epundit@osc.state.ny.us) or by telephone at (518) 474-4032. CONTRACTOR acknowledges that it will not receive payment on any invoices submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

## **XII. CONFIDENTIALITY**

A. In addition to the confidentiality requirements, if any, contained in Appendix G, CONTRACTOR acknowledges that any and all information, records, files, documents or reports contained in any media format (e.g. print, electronic) provided to CONTRACTOR by the DOCCS or otherwise encountered by CONTRACTOR in the provision of services pursuant to this AGREEMENT shall be considered extremely confidential and shall be handled accordingly at all times. Neither CONTRACTOR nor any of its employees, servants, subcontractors, agents or volunteers shall at any time be permitted to utilize any such confidential information for any purpose outside the scope of this AGREEMENT without the express prior written authorization of DOCCS. CONTRACTOR shall educate, monitor and be responsible for its employees, servants, subcontractors, agents and volunteers providing services for CONTRACTOR pursuant to this AGREEMENT concerning these confidentiality requirements. Any breach of the confidentiality requirements

set forth in this Section or in Appendix C by CONTRACTOR or by any of its employees, servants, subcontractors, agents or volunteers may result in the immediate termination of this AGREEMENT by the DOCCS and may subject the CONTRACTOR to further penalties. Annexed hereto as Appendix F is a copy of the Non-Disclosure Agreement

### **XIII. INDEPENDENT CONTRACTOR**

A. It is expressly understood and agreed that CONTRACTOR'S status hereunder is that of an independent contractor and that no official, employee, servant, subcontractor, agent or volunteer of CONTRACTOR is an employee of the DOCCS or the State of New York. CONTRACTOR is solely responsible for the work, compensation, benefits and personal conduct of all such persons assigned to the provision of services pursuant to this AGREEMENT. Nothing contained in this Section or in any other provision of this AGREEMENT shall be construed to impose any liability or duty to the DOCCS or the State of New York to persons, firms, consultants or corporations employed or engaged or otherwise utilized by the CONTRACTOR, either directly or indirectly, in any capacity whatsoever, nor shall the DOCCS or the State of New York be liable for any acts, omissions, obligations and taxes of any nature, including unemployment insurance and worker's compensation, of CONTRACTOR or any of its officials, employees, servants, subcontractors, agents or volunteers.

### **XIV. ASSIGNMENT**

A. The rights and obligations of CONTRACTOR under this AGREEMENT may not be assigned, conveyed, transferred, or subcontracted by CONTRACTOR without prior written authorization of the DOCCS as set forth in Appendix A.

### **XV. NOTICES**

A. All notices and communications made pursuant to this AGREEMENT shall be in writing and shall be delivered to the addresses set forth below or to such

addresses as the parties may from time to time provide to each other. Said notices should be served via registered mail or personally.

Notification to DOCCS:                   NYS DOCCS  
Contract Procurement Unit  
The Harriman State Campus  
1220 Washington Avenue  
Albany, New York 12226

Notification to CONTRACTOR:   Microgenics Corporation  
46500 Kato Road  
Fremont, CA 94538

or any other address as may be hereinafter designated by written notice. No notice shall be effective until received by the addressee. Communications concerning the daily functions and operation of the scope of services are not to be considered as notices. Thus, such communications may be done via telephone, e-mail, fax, United States Postal Service or other means.

## **XVI. MISCELLANEOUS PROVISIONS**

- a. Entire Agreement: This AGREEMENT, including the face page and all its appendices, constitutes the entire AGREEMENT between the parties and supersedes all other communications between the parties relating to the subject matter herein.
- b. Appendix A: DOCCS Appendix A (Standard Clauses as required by the Attorney General for all State contracts) is attached hereto and made a part hereof.
- c. In the event of any conflict between the terms of this Agreement and the terms of it Appendices, the following order of precedence shall apply:

- ☐ Appendix A Standard Clauses for New York State Contracts
- ☐ Appendix B General Specifications
- ☐ Agreement #CC161458
- ☐ Appendix C Invitation for Bids 2018-06

- ☐ Appendix D Bid Cost Sheet
- ☐ Appendix E Vendor Assurance of Non-Conflict or Detrimental Effect;
- ☐ Appendix F Non-Disclosure
- ☐ Appendix G M/WBE and EEO Policy Statement
- ☐ Appendix H Contractor's Bid

- d. Controlling Statutes: This AGREEMENT shall be governed by and construed in accordance with the laws of the State of New York.
- e. Unenforceability: If any part of this AGREEMENT is found to be unenforceable for any reason, that part shall be deemed deleted and all other terms, conditions, and provisions of this AGREEMENT shall remain in full force and effect.
- f. Captions: The captions contained in this AGREEMENT are intended for convenience and reference purposes only and shall in no way be deemed to define, limit or describe the scope or intent of this AGREEMENT, or any provision thereof, or in any way affect this AGREEMENT.
- g. Defense and Indemnification: The Contractor shall assume all risks of liability for its performance, or that of any of its officers, employees, subcontractors or agents, of this contract and shall be solely responsible and liable for all liabilities, losses, damages, costs or expenses, including attorney's fees, arising from any third-party claim, action or proceeding relating to or in any way connected with the performance of this Agreement and covenants and agrees to indemnify and hold harmless the People of the State of New York and NYS Department of Corrections and Community Supervision, their agents, officers and employees, from any and all third-party claims, suits, causes of action and losses of whatever kind and nature, arising out of or in connection with its performance of any contract resulting from this solicitation, including negligence, active or passive or improper conduct of the Contractor, its officers, agents, subcontractors or employees, or the failure by the Contractor, its officers, agents, subcontractors or employees to perform

any obligations or commitments to the State or third parties arising out of or resulting from any contract resulting from this solicitation. The CONTRACTOR's duty to indemnify shall cover direct, indirect, special and consequential damages. Such indemnity shall not be limited to the insurance coverage herein prescribed.

- h. Force Majeure: Neither party shall be liable for losses, defaults, or damages, under this AGREEMENT which result from delays in performing, or inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of this AGREEMENT, due to or because of acts of God, the public enemy, acts of government, earthquakes, floods, strikes, typhoons, civil strife, fire or any cause beyond the reasonable control of the party that was so delayed in performing or so unable to perform, provided that such party was not negligent and shall have used reasonable efforts to avoid and overcome such cause. Such party will resume full performance of such obligations and responsibilities promptly upon removal of any such cause.
- i. Non-sectarian: CONTRACTOR is a non-sectarian organization and does not have as one of its purposes the advancement of any religion.
- j. McBride: CONTRACTOR has no business operations in Northern Ireland.
- k. Strict Adherence: The failure of DOCCS to insist upon strict adherence to any provision, fiscal obligation, reporting or other requirement of this AGREEMENT shall not be considered to constitute a waiver or constructive modification to deprive DOCCS of the right to insist upon strict adherence to the terms of this AGREEMENT in the future.
- l. Approval: This AGREEMENT shall not become effective unless and until approved by the Department of Law (Attorney General) and the Comptroller.

- m. M/WBE: By signing said AGREEMENT, CONTRACTOR agrees to comply with all requirements of Minority and Women Business Enterprise Laws, Regulations and Rules (M/WBE) Annexed hereto as Appendix G is a copy of the M/WBE policy.
- n. Executive Order Number 177: By signing said AGREEMENT, CONTRACTOR agrees to comply with all requirements of Executive Order 177. The CONTRACTOR has provided EO177 certification form, signed by an authorized executive or legal representative, as evidence of compliance with the foregoing. Please refer to the Executive Order #177 at:<https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO177.pdf>

**AMENDMENT TO CONTRACT #CC161458**





# Corrections and Community Supervision

**ANDREW M. CUOMO**  
Governor

**ANTHONY J. ANNUCCI**  
Acting Commissioner

## **Amendment to Contract #CC161458** **September 28, 2018**

Larry Wilkie  
Eastern US Regional Sales Manager  
Clinical Diagnostics Division -Toxicology  
Microgenics Corp/Thermo Fisher Scientific  
46500 Kato Road  
Fremont, CA 94538

Dear Mr. Wilkie,

This Amendment ("Amendment Number 1") is executed and delivered to amend certain terms and conditions in Contract #CC161458 between the Department of Corrections and Community Supervision ("DOCCS") and Microgenics Corporation ("Contractor"). When accepted by Contractor, it will become part of the Contract Agreement and will be further evidence of the parties' agreement with respect to the matters set forth below. Please indicate your acceptance of the following terms and conditions by signing below.

1. The test kits used in urinalysis testing typically have a 6 to 24-month shelf life depending on the assay. Should the manufacturer shipped product be short-dated (prior to a 6 month shelf-life) and the customer is unable to use, the manufacturer will replace that product at no charge.
2. Installation/Training Inventory Management Plan per site in regards to ordering/inventory management.
  - Each of the DOCCS Steward's office will be given a standardized ordering sheet that suggests how much they need to order on a QTRLY basis based on their specific volume.
  - During the individual site trainings, each facility's Drug testing Captain or Lt. in charge office will be given a standardized ordering sheet that suggests how much they need to order on a QTRLY basis based on their specific volume.
  - During individual site trainings, the Thermo Fisher Scientific instructor will discuss the usage from each kit and what normal usage should be based on that site's individual volume.
  - Post order recommendations in training materials for reference and in other relevant places that would help in regards to compliance.

- Hold Bi-yearly reviews with each site to determine if usage needs to be increased or decreased based on changing needs. This review will summarize account activity specific for that location and will provide details such as the annual proposed quantities per reagent, totals ordered to date and the expenses. Data will be delineated by reagent types, numbers of tests and dollars spent.
- If the volume or reagents in use changes, DOCCS will notify the local Account Manager ASAP of the need to change.
- We would encourage DOCCS purchasing departments to limit the specific dollar amount each site can spend in a PO to what is recommended per their projected volume.
- If anything was needed above this recommendation, have individual site share details with individual purchasing departments for DOCCS on rationale.

### 3. NYS DOCCS-State Level information in Aggregate.

- Provide all data that was shared for each individual site in aggregate.
- Submit bi-annual reporting of contract activity resulting from the Master Agreement. Will summarize all account activity by each location and with purchasing activity details such as the annual proposed quantities per reagent, totals ordered to date and the costs. Data that is delineated by reagent types and numbers of tests.

"Above Revision Agreed to and Accepted"

#### CONTRACTOR

Authorized signature: <i>Deborah Robinson</i>	Title: <i>FINANCE MANAGER SNR.</i>
Print name: <i>DEBORAH ROBINSON</i>	Date: <i>10/2/18</i>

#### DOCCS

Authorized signature: <i>Kim M. Gurney</i>	Title: <i>ASST DIR. FIN ADMIN 3</i>
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#### OFFICE OF THE STATE COMPTROLLER



# **APPENDIX A**

## **Standard Clauses for New York State Contracts**

## **APPENDIX A**

# **STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

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January 2014

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## STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds REDACTED (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds REDACTED, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed REDACTED (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this

contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of

any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this

contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.**

(a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.**

In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of REDACTED

whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of REDACTED whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of REDACTED whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", REDACTED \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment

opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.



In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

#### **19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.**

In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
Albany, New York 12245  
Telephone: 518-292-5100  
Fax: 518-292-5884  
email: [opa@esd.ny.gov](mailto:opa@esd.ny.gov)

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414  
email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

#### **21. RECIPROCITY AND SANCTIONS PROVISIONS.**

Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded

the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at:  
<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not

limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

# **APPENDIX B**

## **General Specifications**

**APPENDIX B**  
**GENERAL SPECIFICATIONS**

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**GENERAL**

1. **APPLICABILITY** The terms and conditions set forth in this Appendix B are expressly incorporated in and applicable to the resulting procurement contracts let by the Department of Corrections and Community Supervision, or let by any other Authorized User where incorporated by reference in its Bid Documents. Captions are intended as descriptive and are not intended to limit or otherwise restrict the terms and conditions set forth herein.

2. **GOVERNING LAW** This procurement, the resulting contract and any purchase orders issued hereunder shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise, and actions or proceedings arising from the contract shall be heard in a court of competent jurisdiction in the State of New York.

3. **ETHICS COMPLIANCE** All Bidders/Contractors and their employees must comply with the requirements of Sections 73 and 74 of the Public Officers Law, other State codes, rules, regulations and executive orders establishing ethical standards for the conduct of business with New York State. In signing the Bid, Bidder certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relationships, etc., involving New York State and/or its employees. Failure to comply with those provisions may result in disqualification from the Bidding process, termination of contract, and/or other civil or criminal proceedings as required by law.

4. **CONFLICT OF TERMS** Unless otherwise set forth in the procurement or contract documents, conflicts among documents shall be resolved in the following order of precedence:

- a. **Appendix A** (Standard Clauses for NYS Contracts)
- b. **Mini-Bid Project Definition** if applicable and in accordance with the terms and conditions of the Back-Drop Contract.
- c. **Contract and other writing(s)** setting forth the final agreements, clarifications and terms between the Bid Documents and Contractor's Bid. In the latter circumstance, clarifications must specifically note in writing what was offered by the Contractor and what was accepted by the State. If not, such clarifications shall be considered last in the order of precedence under this paragraph.
- d. **Bid Documents** (Other than Appendix A).
  - i. Bid Specifications prepared by the Authorized User.
  - ii. Appendix B (General Specifications).
  - iii. Incorporated Contract Appendices, if any, following the order of precedence as stated for Contract above.
- e. **Contractor's Bid or Mini-Bid Proposal**.
- f. **Unincorporated Appendices** (if any).

5. **DEFINITIONS** Terms used in this Appendix B shall have the following meanings:

**AFFILIATE** Any individual or other legal entity, (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) that effectively controls another company in which (a) the Bidder owns more than 50% of the ownership; or (b) any individual or other legal entity which owns more than 50% of the ownership of the Bidder. In addition, if a Bidder owns less than 50% of the ownership of another legal entity, but directs or has the right to direct such entity's daily operations, that entity will be an Affiliate.

**AGENCY OR AGENCIES** The State of New York, acting by or through one or more departments, boards, commissions, offices or institutions of the State of New York.

**ATTORNEY GENERAL** Attorney General of the State of New York.

**AUTHORIZED USER(S)** Agencies, or any other entity authorized by the laws of the State of New York to participate in NYS centralized contracts (including but not limited to political subdivisions, public authorities, public benefit corporations and certain other entities set forth in law), or the State of New York acting on behalf of one or more such Agencies or other entities, provided that each such Agency or other entity shall be held solely responsible for liabilities or payments due as a result of its participation.

**BID OR BID PROPOSAL** An offer or proposal submitted by a Bidder to furnish a described product or a solution, perform services or means of achieving a practical end, at a stated price for the stated Contract term. As required by the Bid Documents, the Bid or proposal may be subject to modification through the solicitation by the Agency of best and final offers during the evaluation process prior to recommendation for award of the Contract.

**BIDDER/OFFERER** Any individual or other legal entity (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) which submits a Bid in response to a Bid Solicitation. The term Bidder shall also include the term "offeror." In the case of negotiated Contracts, "Bidder" shall refer to the "Contractor."

**BID DOCUMENTS** Writings by the State setting forth the scope, terms, conditions and technical specifications for a procurement of Product. Such writings typically include, but are not limited to: Invitation for Bids (IFB), Request for Quotation (RFQ), Request for Proposals (RFP), addenda or amendments thereto, and terms and conditions which are incorporated by reference, including but not limited to, Appendix A (Standard Clauses for NYS Contracts), Appendix B, (General Specifications). Where these General Specifications are incorporated in negotiated Contracts that have not been competitively Bid, the term "Bid Documents" shall be deemed to refer to the terms and conditions set forth in the negotiated Contract and associated documentation.

**BID SPECIFICATION** A written description drafted by the Authorized User setting forth the specific terms of the intended procurement, which may include: physical or functional characteristics, the nature of a commodity or construction item, any description of the work to be performed, Products to be provided, the necessary qualifications of the Bidder, the capacity and capability of the Bidder to successfully carry out the proposed Contract, or the process for achieving specific results and/or anticipated outcomes or any other requirement necessary to perform work. Where these General Specifications are incorporated in negotiated Contracts that have not been competitively Bid, the term "Bid Specifications" shall be deemed to refer to the terms and conditions set forth in the negotiated Contract and associated documentation.

**COMMISSIONER** Commissioner of DOCCS, or in the case of Bid Specifications issued by an Authorized User, the head of such Authorized User or their authorized representative.

**COMPTROLLER** Comptroller of the State of New York.

**CONTRACT** The writing(s) which contain the agreement of the Commissioner and the Bidder/Contractor setting forth the total legal obligation between the parties as determined by applicable rules of law, and which most typically include the following classifications of public procurements:



**a. Agency Specific Contracts** Contracts where the specifications for a Product or a particular scope of work are described and defined to meet the needs of one or more Authorized User(s).

**b. Piggyback Contract** A Contract let by any department, agency or instrumentality of the United States government, or any department, agency, office, political subdivision or instrumentality of any state or state(s) which is adopted and extended for use by the DOCCS Commissioner in accordance with the requirements of the State Finance Law.

**c. Contract Letter** A letter to the successful Bidder(s) indicating acceptance of its Bid in response to a solicitation. Unless otherwise specified, the issuance of a Letter of Acceptance forms a Contract but is not an order for Product, and Contractor should not take any action with respect to actual Contract deliveries except on the basis of Purchase Orders sent from Authorized User(s).

**CONTRACT AWARD NOTIFICATION** An announcement to Authorized Users that a Contract has been established.

**CONTRACTOR** Any successful Bidder(s) to whom a Contract has been awarded by the Commissioner.

**DOCUMENTATION** The complete set of manuals (e.g., user, installation, instruction or diagnostic manuals) in either hard or electronic copy, which are necessary to enable an Authorized User to properly test, install, operate and enjoy full use of the Product.

**EMERGENCY** An urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk.

**ENTERPRISE** The total business operations in the United States of Authorized User (s) without regard to geographic location where such operations are performed or the entity actually performing such operations on behalf of Authorized User.

**ENTERPRISE LICENSE** A license grant of unlimited rights to deploy, access, use and execute Product anywhere within the Enterprise up to the maximum capacity stated on the Purchase Order or in the Contract.

**ERROR CORRECTIONS** Machine executable software code furnished by Contractor which corrects the Product so as to conform to the applicable warranties, performance standards and/or obligations of the Contractor.

**INVITATION FOR BIDS (IFB)** A type of Bid Document which is most typically used where requirements can be stated and award will be made based on lowest price to the responsive and responsible Bidder(s).

**LICENSED SOFTWARE** Software transferred upon the terms and conditions set forth in the Contract. "Licensed Software" includes error corrections, upgrades, enhancements or new releases, and any deliverables due under a maintenance or service contract (e.g., patches, fixes, PTFs, programs, code or data conversion, or custom programming).

**LICENSEE** One or more Authorized Users who acquire Product from Contractor by issuing a Purchase Order in accordance with the terms and conditions of the Contract; provided that, for purposes of compliance with an individual license, the term "Licensee" shall be deemed to refer separately to the individual Authorized User(s) who took receipt of and who is executing the Product, and who shall be solely responsible for performance and liabilities incurred. In the case

of acquisitions by State Agencies, the Licensee shall be the State of New York.

**LICENSE EFFECTIVE DATE** The date Product is delivered to an Authorized User. Where a License involves Licensee's right to copy a previously licensed and delivered Master Copy of a Program, the license effective date for additional copies shall be deemed to be the date on which the Purchase Order is executed.

**LICENSOR** A Contractor who transfers rights in proprietary Product to Authorized Users in accordance with the rights and obligations specified in the Contract.

**MINI-BID PROJECT DEFINITION** A Bid Document containing project specific Bid Specifications developed by or for an Authorized User which solicits Bids from Contractors previously qualified under a Back-Drop Contract.

**MULTIPLE AWARD** A determination and award of a Contract in the discretion of the Commissioner to more than one responsive and responsible Bidder who meets the requirements of a specification, where the multiple award is made on the grounds set forth in the Bid Document in order to satisfy multiple factors and needs of Authorized Users (e.g., complexity of items, various manufacturers, differences in performance required to accomplish or produce required end results, production and distribution facilities, price, compliance with delivery requirements, geographic location or other pertinent factors).

**NEW PRODUCT RELEASES (Product Revisions)** Any commercially released revisions to the licensed version of a Product as may be generally offered and available to Authorized Users. New releases involve a substantial revision of functionality from a previously released version of the Product.

**PROCUREMENT RECORD** Documentation by the Authorized User of the decisions made and approach taken during the procurement process and during the contract term.

**PRODUCT** A deliverable under any Bid or Contract which may include commodities, services and/or technology. The term "Product" includes Licensed Software.

**PROPRIETARY** Protected by secrecy, patent, copyright or trademark against commercial competition.

**PURCHASE ORDER** The Authorized User's fiscal form or format that is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, electronic Purchase Order, or other authorized instrument).

**REQUEST FOR PROPOSALS (RFP)** A type of Bid Document that is used for procurements where factors in addition to cost are considered and weighted in awarding the contract and where the method of award is "best value," as defined by the State Finance Law.

**REQUEST FOR QUOTATION (RFQ)** A type of Bid Document that can be used when a formal Bid opening is not required (e.g., discretionary, sole source, single source or emergency purchases).

**RESPONSIBLE BIDDER** A Bidder that is determined to have financial and organizational capacity, legal authority, satisfactory previous performance, skill, judgment and integrity, and that is found to be competent, reliable and experienced, as determined by the Commissioner. For purposes of being deemed responsible, a Bidder must also be determined to be in compliance with Sections 139-j and 139-k of the State Finance Law relative to restrictions on contacts



during the procurement process and disclosure of contacts and prior findings of non-responsibility under these statutes.

**RESPONSIVE BIDDER** A Bidder meeting the specifications or requirements prescribed in the Bid Document or solicitation, as determined by the Commissioner.

**SINGLE SOURCE** A procurement where two or more Bidders can supply the required Product, and the Commissioner may award the contract to one Bidder over the other.

**SITE** The location (street address) where Product will be executed or services delivered.

**SOLE SOURCE** A procurement where only one Bidder is capable of supplying the required Product.

**SOURCE CODE** The programming statements or instructions written and expressed in any language understandable by a human being skilled in the art which are translated by a language compiler to produce executable machine Object Code.

**STATE** State of New York.

**SUBCONTRACTOR** Any individual or other legal entity, (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) who has entered into a contract, express or implied, for the performance of a portion of a Contract with a Contractor.

**TERMS OF LICENSE** The terms and conditions set forth in the Contract that are in effect and applicable to a Purchase Order at the time of order placement.

**VIRUS** Any computer code, whether or not written or conceived by Contractor, that disrupts, disables, harms, or otherwise impedes in any manner the operation of the Product, or any other associated software, firmware, hardware, or computer system (such as local area or wide-area networks), including aesthetic disruptions or distortions, but does not include security keys or other such devices installed by Product manufacturer.

## **BID SUBMISSION**

**6. INTERNATIONAL BIDDING** All offers (tenders), and all information and Product required by the solicitation or provided as explanation thereof, shall be submitted in English. All prices shall be expressed, and all payments shall be made, in United States Dollars (\$US). Any offers (tenders) submitted which do not meet the above criteria will be rejected.

**7. BID OPENING** Bids may, as applicable, be opened publicly. The Commissioner reserves the right at any time to postpone or cancel a scheduled Bid opening.

**8. BID SUBMISSION** All Bids are to be packaged, sealed and submitted to the location stated in the Bid Specifications. Bidders are solely responsible for timely delivery of their Bids to the location set forth in the Bid Specifications prior to the stated Bid opening date/time.

A Bid return envelope, if provided with the Bid Specifications, should be used with the Bid sealed inside. If the Bid response does not fit into the envelope, the Bid envelope should be attached to the outside of the sealed box or package with the Bid inside. If using a commercial

delivery company that requires use of their shipping package or envelope, Bidder's sealed Bid, labeled as detailed below, should be placed within the shipper's sealed envelope to ensure that the Bid is not prematurely opened.

All Bids must have a label on the outside of the package or shipping container outlining the following information:

**"BID ENCLOSED** (bold print, all capitals)

- Group Number
- IFB or RFP Number
- Bid Submission date and time"

In the event that a Bidder fails to provide such information on the return Bid envelope or shipping material, the receiving entity reserves the right to open the shipping package or envelope to determine the proper Bid number or Product group, and the date and time of Bid opening. Bidder shall have no claim against the receiving entity arising from such opening and such opening shall not affect the validity of the Bid or the procurement.

Notwithstanding the receiving agency's right to open a Bid to ascertain the foregoing information, Bidder assumes all risk of late delivery associated with the Bid not being identified, packaged or labeled in accordance with the foregoing requirements.

All Bids must be signed by a person authorized to commit the Bidder to the terms of the Bid Documents and the content of the Bid (offer).

**9. FACSIMILE SUBMISSIONS** Unless specifically prohibited by the terms of the Bid Specifications, facsimile Bids may be SUBMITTED AT THE SOLE OPTION AND RISK OF THE BIDDER. Only the FAX number(s) indicated in the Bid Specifications may be used. Access to the facsimile machine(s) is on a "first come, first serve" basis, and the Commissioner bears no liability or responsibility and makes no guarantee whatsoever with respect to the Bidder's access to such equipment at any specific time. Bidders are solely responsible for submission and receipt of the entire facsimile Bid by the Authorized User prior to Bid opening and must include on the first page of the transmission the total number of pages transmitted in the facsimile, including the cover page. Incomplete, ambiguous or unreadable transmissions in whole or in part may be rejected at the sole discretion of the Commissioner. Facsimile Bids are fully governed by all conditions outlined in the Bid Documents and must be submitted on forms or in the format required in the Bid Specifications, including the executed signature page and acknowledgment.

**10. AUTHENTICATION OF FACSIMILE BIDS** The act of submitting a Bid by facsimile transmission, including an executed signature page or as otherwise specified in the Bid Documents, shall be deemed a confirming act by Bidder which authenticates the signing of the Bid.

**11. LATE BIDS** For purposes of Bid openings held and conducted by DOCCS, a Bid must be received in such place as may be designated in the Bid Documents.

Any Bid received at the specified location after the time specified will be considered a late Bid. A late Bid shall not be considered for award unless: (i) no timely Bids meeting the requirements of the Bid Documents are received or, (ii) in the case of a multiple award, an insufficient number of timely Bids were received to satisfy the multiple award; and acceptance of the late Bid is in the best interests of the Authorized Users. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of the

Authorized User shall not excuse late Bid submissions. Similar types of delays, including but not limited to, bad weather, or security procedures for parking and building admittance shall not excuse late Bid submissions. Determinations relative to Bid timeliness shall be at the sole discretion of the Commissioner.

**12. BID CONTENTS** Bids must be complete and legible. All Bids must be signed. All information required by the Bid Specifications must be supplied by the Bidder on the forms or in the format specified. No alteration, erasure or addition is to be made to the Bid Documents. Changes may be ignored by the Commissioner or may be grounds for rejection of the Bid. Changes, corrections and/or use of white-out in the Bid or Bidder's response portion of the Bid Document must be initialed by an authorized representative of the Bidder. Bidders are cautioned to verify their Bids before submission, as amendments to Bids or requests for withdrawal of Bids received by the Commissioner after the time specified for the Bid opening, may not be considered.

**13. EXTRANEOUS TERMS** Bids must conform to the terms set forth in the Bid Documents, as extraneous terms or material deviations (including additional, inconsistent, conflicting or alternative terms) may render the Bid non-responsive and may result in rejection of the Bid.

Extraneous term(s) submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, contracts or other documents) that are attached or referenced with submissions shall not be considered part of the Bid or resulting Contract, but shall be deemed included for informational or promotional purposes only.

Only those extraneous terms that meet all the following requirements may be considered as having been submitted as part of the Bid:

- a. Each proposed extraneous term (addition, deletion, counter-offer, deviation, or modification) must be specifically enumerated in a writing which is not part of a pre-printed form; and
- b. The writing must identify the particular specification requirement (if any) that Bidder rejects or proposes to modify by inclusion of the extraneous term; and
- c. The Bidder shall enumerate the proposed addition, counter offer, modification or deviation from the Bid Document, and the reasons therefore.

No extraneous term(s), whether or not deemed "material," shall be incorporated into a Contract or Purchase Order unless submitted in accordance with the above and the Commissioner or Authorized User expressly accepts each such term(s) in writing. Acceptance and/or processing of the Bid shall not constitute such written acceptance of Extraneous Term(s).

**14. CONFIDENTIAL/TRADE SECRET MATERIALS**

a. **Contractor** Confidential, trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission by the Bidder. Marking the Bid as "confidential" or "proprietary" on its face or in the document header or footer shall not be considered by the Commissioner or Authorized User to be sufficient without specific justification as to why disclosure of particular information in the Bid would cause substantial injury to the competitive position of the Bidder. Bidders/Contractors intending to seek an exemption from disclosure of these materials under the Freedom of Information Law must request the exemption in writing, setting forth the reasons for the claimed exemption. Acceptance of the claimed materials does not constitute a

determination on the exemption request, which determination will be made in accordance with statutory procedures. Properly identified information that has been designated confidential, trade secret, or proprietary by the Bidder will not be disclosed except as may be required by the Freedom of Information Law or other applicable State and federal laws.

b. **Commissioner or Authorized User** Contractor further warrants, covenants and represents that any confidential information obtained by Contractor, its agents, Subcontractors, officers, distributors, resellers or employees in the course of performing its obligations, including without limitation, security procedures, business operations information, or commercial proprietary information in the possession of the State or any Authorized User hereunder or received from another third party, will not be divulged to any third parties. Contractor shall not be required to keep confidential any such material that is publicly available through no fault of Contractor, independently developed by Contractor without reliance on confidential information of the Authorized User, or otherwise obtained under the Freedom of Information Act or other applicable New York State laws and regulations. This warranty shall survive termination of this Contract. Contractor further agrees to take appropriate steps as to its agents, Subcontractors, officers, distributors, resellers or employees regarding the obligations arising under this clause to insure such confidentiality.

**15. RELEASE OF BID EVALUATION MATERIALS** Requests concerning the evaluation of Bids may be submitted under the Freedom of Information Law. Information, other than statistical or factual tabulations or data such as the Bid Tabulation, shall only be released as required by law after Contract award. Bid Tabulations are not maintained for all procurements. Names of Bidders may be disclosed after Bid opening upon request. Written requests should be directed to the Commissioner.

**16. FREEDOM OF INFORMATION LAW** During the evaluation process, the content of each Bid will be held in confidence and details of any Bid will not be revealed (except as may be required under the Freedom of Information Law or other State law). The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. This exception would be effective both during and after the evaluation process. If the Bid contains any such trade secret or other confidential or proprietary information, it must be accompanied in the Bid with a written request to the Commissioner to not disclose such information. Such request must state with particularity the reasons why the information should not be available for disclosure and must be provided at the time of submission of the Bid. Notations in the header, footer or watermark of the Bid Document will not be considered sufficient to constitute a request for non-disclosure of trade secret or other confidential or proprietary information. Where a Freedom of Information request is made for trademark or other confidential or proprietary information, the Commissioner reserves the right to determine upon written notice to the Bidder whether such information qualifies for the exemption for disclosure under the law. Notwithstanding the above, where a Bid tabulation is prepared and Bids publicly opened, such Bid tabulation shall be available upon request.

**17. PREVAILING WAGE RATES - PUBLIC WORKS AND BUILDING SERVICES CONTRACTS** If any portion of work being Bid is subject to the prevailing wage rate provisions of the Labor Law, the following shall apply:

a. **"Public Works" and "Building Services" - Definitions**

i. **Public Works** Labor Law Article 8 applies to contracts for public improvement in which laborers, workers or mechanics are

employed on a “public works” project (distinguished from public “procurement” or “service” contracts). The State, a public benefit corporation, a municipal corporation (including a school district), or a commission appointed by law must be a party to the Contract. The wage and hours provision applies to any work performed by Contractor or Subcontractors.

**ii. Building Services** Labor Law Article 9 applies to Contracts for building service work over ~~REDACTED~~ with a public agency, that: (i) involve the care or maintenance of an existing building, or (ii) involve the transportation of office furniture or equipment to or from such building, or (iii) involve the transportation and delivery of fossil fuel to such building, and (iv) the principal purpose of which is to furnish services through use of building service employees.

**b. Prevailing Wage Rate Applicable to Bid Submissions** A copy of the applicable prevailing wage rates to be paid or provided are annexed to the Bid Documents. Bidders must submit Bids which are based upon the prevailing hourly wages, and supplements in cash or equivalent benefits (i.e., fringe benefits and any cash or non-cash compensation which are not wages, as defined by law) that equal or exceed the applicable prevailing wage rate(s) for the location where the work is to be performed. Bidders may not submit Bids based upon hourly wage rates and supplements below the applicable prevailing wage rates as established by the New York State Department of Labor. Bids that fail to comply with this requirement will be disqualified.

**c. Wage Rate Payments / Changes During Contract Term** The wages to be paid under any resulting Contract shall not be less than the prevailing rate of wages and supplements as set forth by law. It is required that the Contractor keep informed of all changes in the Prevailing Wage Rates during the Contract term that apply to the classes of individuals supplied by the Contractor on any projects resulting from this Contract, subject to the provisions of the Labor Law. Contractor is solely liable for and must pay such required prevailing wage adjustments during the Contract term as required by law.

**d. Public Posting & Certified Payroll Records** In compliance with Article 8, Section 220 of the New York State Labor Law:

**i. Posting** The Contractor must publicly post on the work site, in a prominent and accessible place, a legible schedule of the prevailing wage rates and supplements.

**ii. Payroll Records** Contractors and Subcontractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. For public works contracts over \$25,000 where the Contractor maintains no regular place of business in New York State, such records must be kept at the work site. For building services contracts, such records must be kept at the work site while work is being performed.

**iii. Submission of Certified Payroll Transcripts for Public Works Contracts Only** Contractors and Subcontractors on public works projects must submit monthly payroll transcripts to the Authorized User that has prepared or directs the preparation of the plans and specifications for a public works project, as set forth in the Bid Specifications. For “agency specific” Bids, the payroll records should be submitted to the entity issuing the purchase order. Upon mutual agreement of the Contractor and the Authorized User, the form of submission may be submitted in a specified disk format acceptable to the Department of Labor provided: 1) the Contractor/Subcontractor retains the original records; and, (2) an original signed letter by a duly authorized individual of the Contractor or Subcontractor attesting to the truth and accuracy of the records accompanies the disk. This

provision does not apply to Article 9 of the Labor Law building services contracts.

**iv. Records Retention** Contractors and Subcontractors must preserve such certified transcripts for a period of three years from the date of completion of work on the awarded contract.

**Day's Labor** Eight hours shall constitute a legal day's work for all classes of employees in this state except those engaged in farm and domestic service unless otherwise provided by law.

No laborers, workmen or mechanics in the employ of the Contractor, Subcontractor or other person doing or contracting to do all or part of the work contemplated by the Contract shall be permitted or required to work more than eight hours in any one calendar day or more than five calendar days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. “Extraordinary emergency” shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the NYS Commissioner of Labor for the preservation of the Contract site or for the protection of the life and limb of the persons using the Contract site.

## 18. TAXES

a. Unless otherwise specified in the Bid Specifications or Contract, the quoted Bid price includes all taxes applicable to the transaction.

b. Purchases made by the State of New York and certain non-State Authorized Users are exempt from New York State and local sales taxes and, with certain exceptions, federal excise taxes. To satisfy the requirements of the New York State Sales tax exemption, either the Purchase Order issued by a State Agency or the invoice forwarded to authorize payment for such purchases will be sufficient evidence that the sale by the Contractor was made to the State, an exempt organization under Section 1116 (a) (1) of the Tax Law. Non-State Authorized Users must offer their own proof of exemption upon request. No person, firm or corporation is, however, exempt from paying the State Truck Mileage and Unemployment Insurance or Federal Social Security taxes, which remain the sole responsibility of the Bidder/Contractor.

c. Pursuant to Revised Tax Law 5-a, Contractor will be required to furnish sales tax certification on its behalf and for its affiliates, and subcontractors for Contracts with a value greater than \$100,000 in accordance with provisions of the law.

d. Purchases by Authorized Users other than the State of New York may be subject to certain taxes which were not included in the Bid price, and in those instances the tax should be computed based on the Contract price and added to the invoice submitted to such entity for payment.

**19. EXPENSES PRIOR TO CONTRACT EXECUTION** The Commissioner and any Authorized User(s) are not liable for any costs incurred by a Vendor, Bidder or Contractor in the preparation and production of a Bid, Mini-Bid or best and final offers or for any work performed prior to Contract execution.

**20. ADVERTISING RESULTS** The prior written approval of the Commissioner is required in order for results of the Bid to be used by the Contractor as part of any commercial advertising. The Contractor

shall also obtain the prior written approval of the Commissioner relative to the Bid or Contract for press or other media releases.

## 21. PRODUCT REFERENCES

a. **"Or Equal"** In all Bid Specifications the words "or equal" are understood to apply where a copyrighted, brand name, trade name, catalog reference, or patented Product is referenced. References to such specific Product are intended as descriptive, not restrictive, unless otherwise stated. Comparable Product will be considered if proof of compatibility is provided, including appropriate catalog excerpts, descriptive literature, specifications and test data, etc. The Commissioner's decision as to acceptance of the Product as equal shall be final.

b. **Discrepancies in References** In the event of a discrepancy between the model number referenced in the Bid Specifications and the written description of the Products which cannot be reconciled, with respect to such discrepancy, then the written description shall prevail.

22. **REMANUFACTURED, RECYCLED, RECYCLABLE OR RECOVERED MATERIALS** Upon the conditions specified in the Bid Specifications and in accordance with the laws of the State of New York, Contractors are encouraged to use recycled, recyclable or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health, welfare, safety requirements or in the Bid Specifications. Contractors are further encouraged to offer remanufactured Products to the maximum extent practicable without jeopardizing the performance or intended end use of the Product and unless such use is precluded due to health, welfare, safety requirements or by the Bid Specifications. Where such use is not practical, suitable, or permitted by the Bid Specifications, Contractor shall deliver new materials in accordance with the "Warranties" set forth below.

Items with recycled, recyclable, recovered, refurbished or remanufactured content must be identified in the Bid or Bidder will be deemed to be offering new Product.

23. **PRODUCTS MANUFACTURED IN PUBLIC INSTITUTIONS** Bids offering Products that are manufactured or produced in public institutions will be rejected.

## 24. PRICING

a. **Unit Pricing** If required by the Bid Specifications, the Bidder should insert the price per unit specified and the price extensions in decimals, not to exceed four places for each item unless otherwise specified, in the Bid. In the event of a discrepancy between the unit price and the extension, the unit price shall govern unless, in the sole judgment of the Commissioner, such unit pricing is obviously erroneous.

b. **Net Pricing** Unless otherwise required by the Bid Specifications, prices shall be net, including transportation, customs, tariff, delivery and other charges fully prepaid by the Contractor to the destination(s) indicated in the Bid Specifications, subject to the cash discount.

c. **"No Charge" Bid** When Bids are requested on a number of Products as a Group or Lot, a Bidder desiring to Bid "no charge" on a Product in the Group or Lot must clearly indicate such. Otherwise, such Bid may be considered incomplete and be rejected, in whole or in part, at the discretion of the Commissioner.

d. **Educational Pricing** All Products to be supplied for educational purposes that are subject to educational discounts shall be identified in the Bid and such discounts shall be made available to qualifying institutions.

e. **Third Party Financing** If Product acquisitions are financed through any third party financing, Contractor may be required as a condition of Contract Award to agree to the terms and conditions of a "Consent & Acknowledgment Agreement" in a form acceptable to the Commissioner.

f. **Best Pricing Offer** During the Contract term, if substantially the same or a smaller quantity of a Product is sold by the Contractor outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local governmental entity, the price under this Contract, at the discretion of the Commissioner, shall be immediately reduced to the lower price.

Price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after:

(i) **GSA Changes**: Where NYS Net Prices are based on an approved GSA Schedule, the date the approved GSA Schedule pricing decreases during the Contract term; or

(ii) **Commercial Price List Reductions**: Where NYS Net Prices are based on a discount from Contractor's list prices, the date Contractor lowers its pricing to its customers generally or to similarly situated government customers during the Contract term; or

(iii) **Special Offers/Promotions Generally**: Where Contractor generally offers more advantageous special price promotions or special discount pricing to other customers during the Contract term for a similar quantity, and the maximum price or discount associated with such offer or promotion is better than the discount or Net Price otherwise available under this Contract, such better price or discount shall apply for similar quantity transactions under this Contract for the life of such general offer or promotion; and

(iv) **Special Offers/Promotions to Authorized Users**: Contractor may offer Authorized Users, under either this Contract or any other Contracting vehicle, competitive pricing which is lower than the NYS Net Price set forth herein at any time during the Contract term and such lower pricing shall not be applied as a global price reduction under the Contract pursuant to the foregoing paragraph (iii).

Unless otherwise specified in the Bid Specifications, Contractor may offer lower prices or better terms (see Modification of Contract Terms) on any specific Purchase Order(s) from any Authorized User without being in conflict with, or obligation to comply on a global basis, with the terms of this clause.

g. **Best and Final Prices** As specified in the Bid Documents and Contract, a Contractor may be solicited at the time of issuance of a Purchase Order or Mini-Bid award for best and final pricing for the Product or service to be delivered to the Authorized User. Contractors are encouraged to reduce their pricing upon receipt of such request.

## 25. DRAWINGS

a. **Drawings Submitted With Bid** When the Bid Specifications require the Bidder to furnish drawings and/or plans, such drawings and/or plans shall conform to the mandates of the Bid Documents and shall, when approved by the Commissioner, be considered a part of the Bid and of any resulting Contract. All symbols and other representations appearing on the drawings shall be considered a part of the drawing.

b. **Drawings Submitted During the Contract Term** Where required to develop, maintain and deliver diagrams or other technical schematics regarding the scope of work, Contractor shall do so on an



ongoing basis at no additional charge, and must, as a condition of payment, update drawings and plans during the Contract term to reflect additions, alterations, and deletions. Such drawings and diagrams shall be delivered to the Authorized User's representative.

**c. Accuracy of Drawings Submitted** All drawings shall be neat and professional in manner and shall be clearly labeled as to locations and type of product, connections and components. Drawings and diagrams are to be in compliance with accepted drafting standards. Acceptance or approval of such plans shall not relieve the Contractor from responsibility for design or other errors of any sort in the drawings or plans, or from its responsibility for performing as required, furnishing product, services or installation, or carrying out any other requirements of the intended scope of work.

**26. SITE INSPECTION** Where a site inspection is required by the Bid Specifications or Project Definition, Bidder shall be required to inspect the site, including environmental or other conditions for pre-existing deficiencies that may affect the installed Product, equipment, or environment or services to be provided and, which may affect Bidder's ability to properly deliver, install or otherwise provide the required Product. All inquiries regarding such conditions shall be made in writing. Bidder shall be deemed to have knowledge of any deficiencies or conditions which such inspection or inquiry might have disclosed. Bidder must provide a detailed explanation with its Bid if additional work is required under this clause in order to properly complete the delivery and installation of the required Product or provide the requested service.

**27. PROCUREMENT CARD** The State has entered into an agreement for purchasing card services. The Purchasing Card enables Authorized Users to make authorized purchases directly from a Contractor without processing a Purchase Orders or Purchase Authorizations. Purchasing Cards are issued to selected employees authorized to purchase for the Authorized User and having direct contact with Contractors. Cardholders can make purchases directly from any Contractor that accepts the Purchasing Card.

The Contractor shall not process a transaction for payment through the credit card clearinghouse until the purchased products have been shipped or services performed. Unless the cardholder requests correction or replacement of a defective or faulty Product in accordance with other Contract requirements, the Contractor shall immediately credit a cardholder's account for products returned as defective or faulty.

## **28. SAMPLES**

**a. Standard Samples** Bid Specifications may indicate that the Product to be purchased must be equal to a standard sample on display in a place designated by the Commissioner and such sample will be made available to the Bidder for examination prior to the opening date. Failure by the Bidder to examine such sample shall not entitle the Bidder to any relief from the conditions imposed by the Bid Specifications.

**b. Bidder Supplied Samples** The Commissioner reserves the right to request from the Bidder/Contractor a representative sample(s) of the Product offered at any time prior to or after award of a contract. Unless otherwise instructed, samples shall be furnished within the time specified in the request. Untimely submission of a sample may constitute grounds for rejection of Bid or cancellation of the Contract. Samples must be submitted free of charge and be accompanied by the Bidder's name and address, any descriptive literature relating to the Product and a statement indicating how and where the sample is to be returned. Where applicable, samples must be properly labeled with the appropriate Bid or Contract reference.

A sample may be held by the Commissioner during the entire term of the Contract and for a reasonable period thereafter for comparison with deliveries. At the conclusion of the holding period the sample, where feasible, will be returned as instructed by the Bidder, at the Bidder's expense and risk. Where the Bidder has failed to fully instruct the Commissioner as to the return of the sample (i.e., mode and place of return, etc.) or refuses to bear the cost of its return, the sample shall become the sole property of the receiving entity at the conclusion of the holding period.

**c. Enhanced Samples** When an approved sample exceeds the minimum specifications, all Product delivered must be of the same enhanced quality and identity as the sample. Thereafter, in the event of a Contractor's default, the Commissioner may procure a Product substantially equal to the enhanced sample from other sources, charging the Contractor for any additional costs incurred.

**d. Conformance with Sample(s)** Submission of a sample (whether or not such sample is tested by, or for, the Commissioner) and approval thereof shall not relieve the Contractor from full compliance with all terms and conditions, performance related and otherwise, specified in the Bid Specifications. If in the judgment of the Commissioner the sample or product submitted is not in accordance with the specifications or testing requirements prescribed in the Bid Specifications, the Commissioner may reject the Bid. If an award has been made, the Commissioner may cancel the Contract at the expense of the Contractor.

**e. Testing** All samples are subject to tests in the manner and place designated by the Commissioner, either prior to or after Contract award. Unless otherwise stated in the Bid Specifications, Bidder samples consumed or rendered useless by testing will not be returned to the Bidder. Testing costs for samples that fails to meet Contract requirements may be at the expense of the Contractor.

**f. Requests For Samples By Authorized Users** Requests for samples by Authorized Users require the consent of the Contractor. Where Contractor refuses to furnish a sample, Authorized User may, in its sole discretion, make a determination on the performance capability of the Product or on the issue in question.

## **BID EVALUATION**

**29. BID EVALUATION** The Commissioner reserves the right to accept or reject any and all Bids, or separable portions of offers, and waive technicalities, irregularities, and omissions if the Commissioner determines the best interests of the State will be served. The Commissioner, in his/her sole discretion, may accept or reject illegible, incomplete or vague Bids and his/her decision shall be final. A conditional or revocable Bid which clearly communicates the terms or limitations of acceptance may be considered, and Contract award may be made in compliance with the Bidder's conditional or revocable terms in the offer.

**30. CONDITIONAL BID** Unless the Bid Specifications provides otherwise, a Bid is not rendered non-responsive if the Bidder specifies that the award will be accepted only on all or a specified group of items or Product included in the specification. It is understood that nothing herein shall be deemed to change or alter the method of award contained in the Bid Documents.

**31. CLARIFICATIONS / REVISIONS** Prior to award, the Commissioner reserves the right to seek clarifications, request Bid revisions, or to request any information deemed necessary for proper

evaluation of Bids from all Bidders deemed to be eligible for Contract award. Failure to provide requested information may result in rejection of the Bid.

**32. PROMPT PAYMENT DISCOUNTS** While prompt payment discounts will not be considered in determining the low Bid, the Commissioner may consider any prompt payment discount in resolving Bids which are otherwise tied. However, any notation indicating that the price is net, (e.g., net 30 days), shall be understood to mean only that no prompt payment discount is offered by the Bidder. The imposition of service, interest, or other charges, except pursuant to the provisions of Article 11-A of the State Finance Law, which are applicable in any case, may render the Bid non-responsive and may be cause for its rejection.

**33. EQUIVALENT OR IDENTICAL BIDS** In the event two offers are found to be substantially equivalent, price shall be the basis for determining the award recipient. If two or more Bidders submit substantially equivalent Bids as to pricing or other factors, the decision of the Commissioner to award a Contract to one or more of such Bidders shall be final.

**34. PERFORMANCE AND RESPONSIBILITY QUALIFICATIONS** The Commissioner reserves the right to investigate or inspect at any time whether or not the Product, services, qualifications or facilities offered by the Bidder/Contractor meet the requirements set forth in the Bid Specifications/Contract or as set forth during Contract negotiations. Contractor shall at all times during the Contract term remain responsible and responsive. A Bidder/Contractor must be prepared, if requested by the Commissioner, to present evidence of legal authority to do business in New York State, integrity, experience, ability, prior performance, organizational and financial capacity as well as where applicable, a statement as to supply, plant, machinery and capacity of the manufacturer or source for the production, distribution and servicing of the Product offered/Bid. If the Commissioner determines that the conditions and terms of the Bid Documents, Bid Specifications or Contract are not complied with, or that items, services or Product proposed to be furnished do not meet the specified requirements, or that the legal authority, integrity experience, ability, prior performance, organization and financial capacity or facilities are not satisfactory, the Commissioner may reject such Bid or terminate the Contract.

**35. DISQUALIFICATION FOR PAST PERFORMANCE AND FINDINGS OF NON-RESPONSIBILITY** Bidder may be disqualified from receiving awards if Bidder, or anyone in Bidder's employment, has previously failed to perform satisfactorily in connection with public Bidding or contracts or is deemed non-responsive.

**36. QUANTITY CHANGES PRIOR TO AWARD** The Commissioner reserves the right, at any time prior to the award of a specific quantity Contract, to alter in good faith the quantities listed in the Bid Specifications. In the event such right is exercised, the lowest responsible Bidder meeting Bid Specifications will be advised of the revised quantities and afforded an opportunity to extend or reduce its Bid price in relation to the changed quantities. Refusal by the low Bidder to so extend or reduce its Bid price may result in the rejection of its Bid and the award of such Contract to the lowest responsible Bidder who accepts the revised qualifications.

**37. TIMEFRAME FOR OFFERS** The Commissioner reserves the right to make awards within sixty (60) days after the date of the Bid opening or such other period of time as set forth in the Bid Documents, during which period, Bids must remain firm and cannot be withdrawn.

Pursuant to Section 163(9)(e) of the State Finance Law and Section 2-205 of the Uniform Commercial Code when applicable, where an award is not made within the sixty (60) day period or other time specified as set forth in the Bid Documents, the Bids shall remain firm until such later time as either a Contract is awarded or the Bidder delivers to the Commissioner written notice of the withdrawal of its Bid. Any Bid which expressly states therein that acceptance must be made within a shorter specified time, may at the sole discretion of the Commissioner, be accepted or rejected.

### **TERMS & CONDITIONS**

**38. CONTRACT CREATION / EXECUTION** Except for contracts governed by Article 11-B of the State Finance Law, subject to and upon receipt of all required approvals as set forth in the Bid Specifications a Contract shall be deemed executed and created with the successful Bidder(s), upon the Commissioner's mailing or electronic communication to the address on the Bid/Contract of: (i) the final Contract Award Notice; (ii) a fully executed Contract; or (iii) a Purchase Order authorized by the Commissioner.

**39. MODIFICATION OF CONTRACT TERMS** The terms and conditions set forth in the Contract shall govern all transactions by Authorized User(s) under this Contract. The Contract may only be modified or amended upon mutual written agreement of the Commissioner and Contractor.

The Contractor may, however, offer Authorized User(s) more advantageous pricing, payment, or other terms and conditions than those set forth in the Contract. In such event, a copy of such terms shall be furnished to the Authorized User(s) and Commissioner by the Contractor at the time of such offer.

Other than where such terms are more advantageous for the Authorized User(s) than those set forth in the Contract, no alteration or modification of the terms of the Contract, including substitution of Product, shall be valid or binding against Authorized User(s) unless authorized by the Commissioner or specified in the Contract Award Notification. No such alteration or modification shall be made by unilaterally affixing such terms to Product upon delivery (including, but not limited to, attachment or inclusion of standard pre-printed order forms, product literature, "shrink wrap" terms accompanying software upon delivery, or other documents) or by incorporating such terms onto order forms, purchase orders or other documents forwarded by the Contractor for payment, notwithstanding Authorized User's subsequent acceptance of Product, or that Authorized User has subsequently processed such document for approval or payment.

**40. SCOPE CHANGES** The Commissioner reserves the right, unilaterally, to require, by written order, changes by altering, adding to or deducting from the Bid Specifications, such changes to be within the general scope of the Contract. The Commissioner may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the consent of the Contractor, which consent shall not be unreasonably withheld.

**41. ESTIMATED / SPECIFIC QUANTITY CONTRACTS** Estimated quantity contracts are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the Contract term. No guarantee of any quantity(s) is implied or given. Purchases by Authorized Users from Contracts for services and technology are voluntary.

With respect to any specific quantity stated in the contract, the Commissioner reserves the right after award to order up to 20% more or less (rounded to the next highest whole number) than the specific quantities called for in the Contract. Notwithstanding the foregoing, the Commissioner may purchase greater or lesser percentages of Contract quantities should the Commissioner and Contractor so agree. Such agreement may include an equitable price adjustment.

**42. EMERGENCY CONTRACTS** In the event that a disaster emergency is declared by Executive Order under Section 28 of Article 2-B of the Executive Law, or the Commissioner determines pursuant to his/her authority under Section 163 (10) (b) of the State Finance Law that an emergency exists requiring the prompt and immediate delivery of Product, the Commissioner reserves the right to obtain such Product from any source, including but not limited to this Contract(s), as the Commissioner in his/her sole discretion determines will meet the needs of such emergency. Contractor shall not be entitled to any claim or lost profits for Product procured from other sources pursuant to this paragraph. The reasons underlying the finding that an emergency exists shall be included in the procurement record.

**43. PURCHASE ORDERS** Unless otherwise authorized in writing by the Commissioner, no Product is to be delivered or furnished by Contractor until transmittal of an official Purchase Order from the Authorized User. Unless terminated or cancelled pursuant to the authority vested in the Commissioner, Purchase Orders shall be effective and binding upon the Contractor when placed in the mail or electronically transmitted prior to the termination of the contract period, addressed to the Contractor at the address for receipt of orders set forth in the Contract or in the Contract Award Notification.

All Purchase Orders issued pursuant to Contracts let by the Commissioner must bear the appropriate Contract number and, if necessary, required State approvals. As deemed necessary, the Authorized User may confirm pricing and other Product information with the Contractor prior to placement of the Purchase Order. The State reserves the right to require any other information from the Contractor which the State deems necessary in order to complete any Purchase Order placed under the Contract. Unless otherwise specified, all Purchase Orders against Centralized Contracts will be placed by Authorized Users directly with the Contractor and any discrepancy between the terms stated on the vendor's order form, confirmation or acknowledgment, and the Contract terms shall be resolved in favor of the terms most favorable to the Authorized User. Should an Authorized User add written terms and conditions to the Purchase Order that conflict with the terms and conditions of the Contract, the Contractor has the option of rejecting the Purchase Order within five business days of its receipt but shall first attempt to negotiate the additional written terms and conditions in good faith with the Authorized User, or fulfill the Purchase Order. Notwithstanding the above, the Authorized User reserves the right to dispute any discrepancies arising from the presentation of additional terms and conditions with the Contractor.

If, with respect to an Agency Specific Contract let by DOCCS, a Purchase Order is not received by the Contractor within two weeks after the issuance of a Contract Award Notification, it is the responsibility of the Contractor to request in writing that the appropriate Authorized User forward a Purchase Order. If, thereafter, a Purchase Order is not received within a reasonable period of time, the Contractor shall promptly notify in writing the appropriate purchasing officer. Failure to timely notify such officer may, in the discretion of DOCCS and without cost to the State, result in the cancellation of such requirement by DOCCS with a corresponding reduction in the Contract quantity and price.

**45. PRODUCT DELIVERY** Delivery must be made as ordered to the address specified on the Purchase Order and in accordance with the terms of the Contract or Contract Award Notice. Unless otherwise specified in the Bid Documents, delivery shall be made within thirty calendar days after receipt of a Purchase Order by the Contractor. The decision of the Commissioner as to compliance with delivery terms shall be final. The burden of proof for delay in receipt of Purchase Order shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately notify the Commissioner and the Authorized User, and confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. Any extension of time for delivery must be requested in writing by the Contractor and approved in writing by the Authorized User. Failure to meet such delivery time schedule may be grounds for cancellation of the order or, in the Commissioner's discretion, the Contract.

**45. WEEKEND AND HOLIDAY DELIVERIES** Unless otherwise specified in the Bid Specifications or by an Authorized User, deliveries will be scheduled for ordinary business hours, Monday through Friday (excluding legal holidays observed by the State of New York). Deliveries may be scheduled by mutual agreement for Saturdays, Sundays or legal holidays observed by the State of New York where the Product is for daily consumption, an emergency exists, the delivery is a replacement, delivery is late, or other reasonable circumstance in which event the convenience of the Authorized User shall govern.

**46. SHIPPING/RECEIPT OF PRODUCT**

**a. Packaging** Tangible Product shall be securely and properly packed for shipment, storage and stocking in appropriate, clearly labeled shipping containers and according to accepted commercial practice, without any extra charges for packing materials, cases or other types of containers. The container shall become and remain the property of the Authorized User unless otherwise specified in the Contract documents.

**b. Shipping Charges** Unless otherwise stated in the Bid Specifications, all deliveries shall be deemed to be freight on board (F.O.B.) destination tailgate delivery at the dock of the Authorized User. Unless otherwise agreed, items purchased at a price F.O.B. Shipping point plus transportation charges shall not relieve the Contractor from responsibility for safe and proper delivery notwithstanding the Authorized User's payment of transportation charges. Contractor shall be responsible for ensuring that the Bill of Lading states "charges prepaid" for all shipments.

**c. Receipt of Product** The Contractor shall be solely responsible for assuring that deliveries are made to personnel authorized to accept delivery on behalf of the Authorized User. Any losses resulting from the Contractor's failure to deliver Product to authorized personnel shall be borne exclusively by the Contractor.

**47. TITLE AND RISK OF LOSS** Notwithstanding the form of shipment, title or other property interest, risk of loss shall not pass from the Contractor to the Authorized User until the Products have been received, inspected and accepted by the receiving entity. Acceptance shall occur within a reasonable time or in accordance with such other defined acceptance period as may be specified in the Bid Specifications or Purchase Order. Mere acknowledgment by Authorized User personnel of the delivery or receipt of goods (e.g., signed bill of lading) shall not be deemed or construed as acceptance of the Products received. Any delivery of Product that is substandard or does not comply with the Bid Specifications or Contract terms and conditions, may be rejected or accepted on an adjusted price basis, as determined by the Commissioner.



**48. RE-WEIGHING PRODUCT** Deliveries are subject to re-weighing at the point of destination by the Authorized User. If shrinkage occurs which exceeds that normally allowable in the trade, the Authorized User shall have the option to require delivery of the difference in quantity or to reduce the payment accordingly. Such option shall be exercised in writing by the Authorized User.

**49. PRODUCT SUBSTITUTION** In the event a specified manufacturer's Product listed in the Contract becomes unavailable or cannot be supplied by the Contractor for any reason (except as provided for in the Savings/Force Majeure Clause) a Product deemed in writing by the Commissioner to be equal to or better than the specified Product must be substituted by the Contractor at no additional cost or expense to the Authorized User. Unless otherwise specified, any substitution of Product prior to the Commissioner's written approval may be cause for cancellation of Contract.

**50. REJECTED PRODUCT** When Product is rejected, it must be removed by the Contractor from the premises of the Authorized User within ten calendar days of notification of rejection by the Authorized User. Upon notification of rejection, risk of loss of rejected or non-conforming Product shall remain with Contractor. Rejected items not removed by the Contractor within ten calendar days of notification shall be regarded as abandoned by the Contractor, and the Authorized User shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the Authorized User for any and all costs and expenses incurred in storage or effecting removal or disposition after the ten-calendar day period.

**51. INSTALLATION** Where installation is required, Contractor shall be responsible for placing and installing the Product in the required locations. All materials used in the installation shall be of good quality and shall be free from any and all defects that would mar the appearance of the Product or render it structurally unsound. Installation includes the furnishing of any equipment, rigging and materials required to install or place the Product in the proper location. The Contractor shall protect the site from damage for all its work and shall repair damages or injury of any kind caused by the Contractor, its employees, officers or agents. If any alteration, dismantling or excavation, etc. is required to effect installation, the Contractor shall thereafter promptly restore the structure or site. Work shall be performed to cause the least inconvenience to the Authorized User(s) and with proper consideration for the rights of other Contractors or workers. The Contractor shall promptly perform its work and shall coordinate its activities with those of other Contractors. The Contractor shall clean up and remove all debris and rubbish from its work as required or directed. Upon completion of the work, the building and surrounding area of work shall be left clean and in a neat, unobstructed condition, and everything in satisfactory repair and order.

**52. REPAIRED OR REPLACED PARTS / COMPONENTS**

Where the Contractor is required to repair, replace or substitute Product or parts or components of the Product under the Contract, the repaired, replaced or substituted Products shall be subject to all terms and conditions for new parts and components set forth in the Contract including Warranties, as set forth in the Additional Warranties Clause herein. Replaced or repaired Product or parts and components of such Product shall be new and shall, if available, be replaced by the original manufacturer's component or part. Remanufactured parts or components meeting new Product standards may be permitted by the Commissioner or Authorized User. Before installation, all proposed substitutes for the original manufacturer's installed parts or components must be approved by the Authorized User. The part or component shall be equal to or of better quality than the original part or component being replaced.

**53. ON-SITE STORAGE** With the written approval of the Authorized User, materials, equipment or supplies may be stored at the Authorized User's site at the Contractor's sole risk.

**54. EMPLOYEES, SUBCONTRACTORS & AGENTS** All employees, Subcontractors or agents performing work under the Contract must be trained staff or technicians who meet or exceed the professional, technical and training qualifications set forth in the Bid Specifications or the Bid Documents, whichever is more restrictive, and must comply with all security and administrative requirements of the Authorized User. The Commissioner reserves the right to conduct a security background check or otherwise approve any employee, Subcontractor or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause based on, including but not limited to, professional, technical or training qualifications, quality of work or change in security status or non-compliance with Authorized User's security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms. The Commissioner reserves the right to reject and/or bar from the facility for cause any employee, Subcontractor, or agents of the Contractor.

**55. ASSIGNMENT** The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the contract or its right, title or interest therein, or its power to execute such contract to any other person, company, firm or corporation in performance of the contract without the prior written consent of the Commissioner or Authorized User (as applicable). Failure to obtain consent to assignment from the Authorized User shall revoke and annul such Contract. Notwithstanding the foregoing, the State shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignment(s) with the Comptroller. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request to assignment to the Commissioner and seek written agreement from the Commissioner which will be filed with the Comptroller. The Commissioner reserves the right to reject any proposed assignee in his/her discretion.

Upon notice to the Contractor, the Contract may be assigned without the consent of the Contractor to another State Agency or subdivision of the State pursuant to a governmental reorganization or assignment of functions under which the functions are transferred to a successor Agency or to another Agency that assumes responsibilities for the Contract.

**56. SUBCONTRACTORS AND SUPPLIERS** The Commissioner reserves the right to reject any proposed Subcontractor or supplier for bona fide business reasons, which may include, but are not limited to: they are on the Department of Labor's list of companies with which New York State cannot do business; the Commissioner determines that the company is not qualified; the Commissioner determines that the company is not responsible; the company has previously provided unsatisfactory work or services; the company failed to solicit minority and women's business enterprises (M/WBE) Bidders as required by prior Contracts.

**57. PERFORMANCE / BID BOND** The Commissioner reserves the right to require a Bidder or Contractor to furnish without additional cost, a performance, payment or Bid bond or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract. Where required, such bond or other security shall be in the form prescribed by the Commissioner.

**58. SUSPENSION OF WORK** The Commissioner, in his/her sole discretion, reserves the right to suspend any or all activities under this



Contract, at any time, in the best interests of the Authorized User. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze or reduction on State spending, declaration of emergency, contract compliance issues or other such circumstances. Upon issuance of such notice, the Contractor is not to accept any Purchase Orders, and shall comply with the suspension order. Activity may resume at such time as the Commissioner issues a formal written notice authorizing a resumption of performance under the Contract.

An Authorized User may issue a formal written notice for the suspension of work for which it has engaged the Contractor for reasons specified in the above paragraph. The written notice shall set forth the reason for such suspension and a copy of the written notice shall be provided to the Commissioner.

#### **59. TERMINATION**

**a. For Cause:** For a material breach that remains uncured for more than thirty (30) days or other specified period after written notice to the Contractor, the Contract or Purchase Order may be terminated by the Commissioner or Authorized User at the Contractor's expense where Contractor becomes unable or incapable of performing, or meeting any requirements or qualifications set forth in the Contract, or for non-performance, or upon a determination that Contractor is non-responsible. Such termination shall be upon written notice to the Contractor. In such event, the Commissioner or Authorized User may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

**b. For Convenience:** By written notice, this Contract may be terminated at any time by the State for convenience upon sixty (60) days written notice or other specified period without penalty or other early termination charges due. Such termination of the Contract shall not affect any project or Purchase Order that has been issued under the Contract prior to the date of such termination. If the Contract is terminated pursuant to this subdivision, the Authorized User shall remain liable for all accrued but unpaid charges incurred through the date of the termination. Contractor shall use due diligence and provide any outstanding deliverables.

**c. For Violation of the Sections 139-j and 139-k of the State Finance Law:** The Commissioner reserves the right to terminate the Contract in the event it is found that the certification filed by the Bidder in accordance with Section 139-k of the State Finance Law was intentionally false or intentionally incomplete. Upon such finding, the Commissioner may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.

**d. For Violation of Revised Tax Law 5a:** The Commissioner reserves the right to terminate the contract in the event it is found that the certification filed by the Contractor in accordance with §5-a of the Tax Law is not timely filed during the term of the Contract or the certification furnished was intentionally false or intentionally incomplete. Upon such finding, the Commissioner may exercise its termination right by providing written notification to the Contractor.

**60. SAVINGS/FORCE MAJEURE** A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled. Force majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or the Commissioner in the performance of the Contract which non-performance, by exercise of reasonable diligence, cannot

be prevented. Contractor shall provide the Commissioner with written notice of any force majeure occurrence as soon as the delay is known.

Neither the Contractor nor the Commissioner shall be liable to the other for any delay in or failure of performance under the Contract due to a force majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contractor and the Commissioner to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.

Notwithstanding the above, at the discretion of the Commissioner where the delay or failure will significantly impair the value of the Contract to the State or to Authorized Users, the Commissioner may:

- a.** Accept allocated performance or deliveries from the Contractor. The Contractor, however, hereby agrees to grant preferential treatment to Authorized Users with respect to Product subjected to allocation; and/or
- b.** Purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the State; or
- c.** Terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.

In addition, the Commissioner reserves the right, in his/her sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (i) the volatility is due to causes outside the control of Contractor; (ii) the volatility affects the marketplace or industry, not just the particular Contract source of supply; (iii) the effect on pricing or availability of supply is substantial; and (iv) the volatility so affects Contractor's performance that continued performance of the Contract would result in a substantial loss.

**61. CONTRACT BILLINGS** Contractor and the distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billings for Authorized Users must contain all information required by the Contract and the State Comptroller. The State Comptroller shall render payment for Authorized User purchases, and such payment shall be made in accordance with ordinary State procedures and practices. Payment of Contract purchases made by Authorized Users, other than Agencies, shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authorized User.

Submission of an invoice and payment thereof shall not preclude the Commissioner from reimbursement or demanding a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of the Contract or where the billing was inaccurate.

Contractor shall provide, upon request of the Commissioner, any and all information necessary to verify the accuracy of the billings. Such

information shall be provided in the format requested by the Commissioner and in a media commercially available from the Contractor. The Commissioner may direct the Contractor to provide the information to the State Comptroller or to any Authorized User of the Contract.

## **62. DEFAULT – AUTHORIZED USER**

**a. Breach of Authorized User Not Breach of Centralized Contract.** An Authorized User's breach shall not be deemed a breach of the Centralized Contract, rather it shall be deemed a breach of the Authorized User's performance under the terms and conditions of the Centralized Contract.

**b. Failure to Make Payment.** In the event a participating Authorized User fails to make payment to the Contractor for Products delivered, accepted and properly invoiced, within 60 days of such delivery and acceptance, the Contractor may, upon 10 days advance written notice to both the Commissioner and the Authorized User's purchasing official, suspend additional shipments of Product or provision of services to such entity until such time as reasonable arrangements have been made and assurances given by such entity for current and future Contract payments.

**c. Notice of Breach.** Notwithstanding the foregoing, the Contractor shall, at least 10 days prior to declaring a breach of Contract by any Authorized User, by certified or registered mail, notify both the Commissioner and the purchasing official of the breaching Authorized User of the specific facts, circumstances and grounds upon which a breach will be declared.

**d. It is understood, however, that if the Contractor's basis for declaring a breach is insufficient, the Contractor's declaration of breach and failure to service an Authorized User shall constitute a breach of its Contract and the Authorized User may thereafter seek any remedy available at law or equity.**

## **63. INTEREST ON LATE PAYMENTS**

**a. State Agencies** The payment of interest on certain payments due and owed by Agency may be made in accordance with Article 11-A of the State Finance Law (SFL §179-d et. Seq.) and Title 2 of the New York Code of Rules and Regulations, Part 18 (Implementation of Prompt Payment Legislation -2 NYCRR §18.1 et seq.).

**b. By Non-State Agencies** The terms of Article 11-A apply only to procurements by and the consequent payment obligations of Agencies. Neither expressly nor by any implication is the statute applicable to Non-State Authorized Users. Neither DOCCS nor the State Comptroller is responsible for payments on any purchases made by a Non-State Agency Authorized User.

**c. By Contractor** Should the Contractor be liable for any payments to the State hereunder, interest, late payment charges and collection fee charges will be determined and assessed pursuant to Section 18 of the State Finance Law.

**64. REMEDIES FOR BREACH** It is understood and agreed that all rights and remedies afforded below shall be in addition to all remedies or actions otherwise authorized or permitted by law:

**a. Cover/Substitute Performance** In the event of Contractor's material breach, the Commissioner may, with or without formally Bidding: (i) Purchase from other sources; or (ii) If the Commissioner is unsuccessful after making reasonable attempts, under the circumstances then existing, to timely obtain acceptable service or acquire replacement Product of equal or comparable quality, the

Commissioner may acquire acceptable replacement Product of lesser or greater quality.

Such purchases may, in the discretion of the Commissioner, be deducted from the Contract quantity and payments due Contractor.

**b. Withhold Payment** In any case where a question of non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the Commissioner. Should the amount withheld be finally paid, a cash discount originally offered may be taken as if no delay in payment had occurred.

**c. Bankruptcy** In the event that the Contractor files a petition under the U.S. Bankruptcy Code during the term of this Centralized Contract, Authorized Users may, at their discretion, make application to exercise its right to set-off against monies due the Debtor or, under the Doctrine of Recoupment, credit the Authorized User the amounts owed by the Contractor arising out of the same transactions.

**d. Reimbursement of Costs Incurred** The Contractor agrees to reimburse the Authorized User promptly for any and all additional costs and expenses incurred for acquiring acceptable services, and/or replacement Product. Should the cost of cover be less than the Contract price, the Contractor shall have no claim to the difference. The Contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the Contractor, all costs and expenses expended or incurred by the Authorized User in connection therewith, including reasonable attorney's fees, shall be paid by the Contractor.

Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the ordering Authorized User may rent substitute equipment temporarily. Any sums expended for such rental shall, upon demand, be reimbursed to the Authorized User promptly by the Contractor or deducted by the Authorized User from payments due or to become due the Contractor on the same or another transaction.

**e. Deduction/Credit** Sums due as a result of these remedies may be deducted or offset by the Authorized User from payments due, or to become due, the Contractor on the same or another transaction. If no deduction or only a partial deduction is made in such fashion the Contractor shall pay to the Authorized User the amount of such claim or portion of the claim still outstanding, on demand. The Commissioner reserves the right to determine the disposition of any rebates, settlements, restitution, liquidated damages, etc., which arise from the administration of the Contract.

**65. ASSIGNMENT OF CLAIM** Contractor hereby assigns to the State any and all its claims for overcharges associated with this Contract which may arise under the antitrust laws of the United States, 15 USC Section 1, et. seq. and the antitrust laws of the State of New York, General Business Law Section 340, et. seq.

**66. TOXIC SUBSTANCES** Each Contractor furnishing a toxic substance as defined by Section 875 of the Labor Law, shall provide such Authorized User with not less than two copies of a material safety data sheet, which sheet shall include for each such substance the information outlined in Section 876 of the Labor Law.

Before any chemical product is used or applied on or in any building, a copy of the product label and Material Safety Data Sheet must be provided to and approved by the Authorized User agency representative.

**67. INDEPENDENT CONTRACTOR** It is understood and agreed that the legal status of the Contractor, its agents, officers and employees

under this Contract is that of an independent Contractor, and in no manner shall they be deemed employees of the Authorized User, and therefore are not entitled to any of the benefits associated with such employment. The Contractor agrees, during the term of this Contract, to maintain at Contractor's expense those benefits to which its employees would otherwise be entitled by law, including health benefits, and all necessary insurance for its employees, including worker's compensation, disability and unemployment insurance, and to provide the Authorized User with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, state and local taxes, and all FICA contributions.

**68. SECURITY** Contractor warrants, covenants and represents that it will comply fully with all security procedures of the Authorized User(s) in performance of the Contract including but not limited to physical, facility, documentary and cyber security rules, procedures and protocols.

**69. COOPERATION WITH THIRD PARTIES** The Contractor shall be responsible for fully cooperating with any third party, including but not limited to other Contractors or Subcontractors of the Authorized User, as necessary to ensure delivery of Product or coordination of performance of services.

**70. CONTRACT TERM - RENEWAL** In addition to any stated renewal periods in the Contract, any Contract or unit portion thereof let by the Commissioner may be extended by the Commissioner for an additional period(s) of up to one year with the written concurrence of the Contractor and Comptroller. Such extension may be exercised on a month to month basis or in other stated periods of time during the one year extension.

**71. ADDITIONAL WARRANTIES** Where Contractor, product manufacturer or service provider generally offers additional or more advantageous warranties than set forth below, Contractor shall offer or pass through any such warranties to Authorized Users. Contractor hereby warrants and represents:

**a. Product Performance** Contractor warrants and represents that Products delivered pursuant to this Contract conform to the manufacturer's specifications, performance standards and documentation, and the documentation fully describes the proper procedure for using the Products.

**b. Title and Ownership Warranty** Contractor warrants, represents and conveys (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver perpetual license rights to any Products transferred to Authorized User under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor fully indemnifies the Authorized User for any loss, damages or actions arising from a breach of said warranty without limitation.

**c. Contractor Compliance** Contractor represents and warrants to pay, at its sole expense, for all applicable permits, licenses, tariffs, tolls and fees to give all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Commissioner that it meets or exceeds all requirements of the Bid/Contract and any applicable laws, including but not limited to, permits, insurance coverage, licensing, proof of coverage for worker's compensation, and shall provide such proof as required by the Commissioner. Failure to do so may constitute grounds for the Commissioner to cancel or suspend this

Contract, in whole or in part, or to take any other action deemed necessary by the Commissioner.

**d. Product Warranty** Unless recycled or recovered materials are available in accordance with the "Recycled or Recovered Materials" clause, Product offered shall be standard new equipment, current model or most recent release of regular stock product with all parts regularly used with the type of equipment offered; and no attachment or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice.

Contractor further warrants and represents that components or deliverables specified and furnished by or through Contractor shall individually, and where specified and furnished as a system, be substantially uninterrupted or error-free in operation and guaranteed against faulty material and workmanship for the warranty period, or for a minimum of one (1) year from the date of acceptance, whichever is longer ("Project warranty period"). During the Project warranty period, defects in the materials or workmanship of components or deliverables specified and furnished by or through Contractor shall be repaired or replaced by Contractor at no cost or expense to the Authorized User. Contractor shall extend the Project warranty period for individual component(s), or for the System as a whole, as applicable, by the cumulative period(s) of time, after notification, during which an individual component or the System requires servicing or replacement (down time) or is in the possession of the Contractor, its agents, officers, Subcontractors, distributors, resellers or employees ("extended warranty").

Where Contractor, the Independent Software Vendor "ISV," or other third party manufacturer markets any Project Deliverable delivered by or through Contractor with a standard commercial warranty, such standard warranty shall be in addition to, and not relieve the Contractor from, Contractor's warranty obligations during the project warranty and extended warranty period(s). Where such standard commercial warranty covers all or some of the Project warranty or extended warranty period(s), Contractor shall be responsible for the coordination during the Project warranty or extended warranty period(s) with ISV or other third party manufacturer(s) for warranty repair or replacement of ISV or other third party manufacturer's Product.

Where Contractor, ISV or other third party manufacturer markets any Project Deliverable with a standard commercial warranty which goes beyond the Project warranty or extended warranty period(s), Contractor shall notify the Authorized User and pass through the manufacturer's standard commercial warranty to Authorized User at no additional charge; provided, however, that Contractor shall not be responsible for coordinating services under the third party extended warranty after expiration of the Project warranty and extended warranty period(s).

**e. Replacement Parts Warranty** If during the regular or extended warranty period's faults develop, the Contractor shall promptly repair or, upon demand, replace the defective unit or component part affected. All costs for labor and material and transportation incurred to repair or replace defective Product during the warranty period shall be borne solely by the Contractor, and the State or Authorized User shall in no event be liable or responsible therefor.

Any part of component replaced by the Contractor under the Contract warranty shall be replaced at no cost to the Authorized User and guaranteed for the greater of: a) the warranty period under paragraph (d) above; or b) if a separate warranty for that part or component is generally offered by the manufacturer, the standard commercial warranty period offered by the manufacturer for the individual part or component.

**f. Virus Warranty** The Contractor represents and warrants that Licensed Software contains no known viruses. Contractor is not responsible for viruses introduced at Licensee's site.

**g. Date/Time Warranty** Contractor warrants that Product(s) furnished pursuant to this Contract shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

Where Contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g., billing, invoicing, claim processing), Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

This Date/Time Warranty shall survive beyond termination or expiration of this contract through: a) ninety (90) days or b) the Contractor's or Product manufacturer/developer's stated date/time warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

**h. Workmanship Warranty** Contract warrants that all components or deliverables specified and furnished by or through Contractor under the Project Definition/Work Order meet the completion criteria set forth in the Project Definition/Work Order and any subsequent statement(s) of work, and that services will be provided in a workmanlike manner in accordance with industry standards.

**i. Survival of Warranties** All warranties contained in this Contract shall survive the termination of this Contract.

**72. LEGAL COMPLIANCE** Contractor represents and warrants that it shall secure all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Commissioner that it meets or exceeds all requirements of the Bid and Contract and any applicable laws, including but not limited to, permits, licensing, and shall provide such proof as required by the Commissioner. Failure to comply or failure to provide proof may constitute grounds for the Commissioner to cancel or suspend the Contract, in whole or in part, or to take any other action deemed necessary by the Commissioner. Contractor also agrees to disclose information and provide affirmations and certifications to comply with Sections 139-j and 139-k of the State Finance Law.

**73. INDEMNIFICATION** Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully indemnify and save harmless the Authorized Users from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents,

employees, partners or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the Authorized Users.

**74. INDEMNIFICATION RELATING TO THIRD PARTY RIGHTS** The Contractor will also indemnify and hold the Authorized Users harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs that may be finally assessed against the Authorized Users in any action for infringement of a United States Letter Patent, or of any copyright, trademark, trade secret or other third party proprietary right except to the extent such claims arise from the Authorized Users gross negligence or willful misconduct, provided that the State shall give Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor.

If usage shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion to take action in the following order of precedence: (i) to procure for the Authorized User the right to continue Usage (ii) to modify the service or Product so that Usage becomes non-infringing, and is of at least equal quality and performance; or (iii) to replace said service or Product or part(s) thereof, as applicable, with non-infringing service or Product of at least equal quality and performance. If the above remedies are not available, the parties shall terminate the Contract, in whole or in part as necessary and applicable, provided the Authorized User is given a refund for any amounts paid for the period during which Usage was not feasible.

The foregoing provisions as to protection from third party rights shall not apply to any infringement occasioned by modification by the Authorized User of any Product without Contractor's approval.

In the event that an action at law or in equity is commenced against the Authorized User arising out of a claim that the Authorized User's use of the service or Product under the Contract infringes any patent, copyright or proprietary right, and Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Authorized User and the Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract. Contractor shall in such event protect the interests of the Authorized User and secure a continuance to permit the Authorized User to appear and defend its interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the Authorized User may have. This constitutes the Authorized User's sole and exclusive remedy for patent infringement, or for infringement of any other third party proprietary right.

**75. LIMITATION OF LIABILITY** Except as otherwise set forth in the Indemnification Paragraphs above, the limit of liability shall be as follows:

**a.** Contractor's liability for any claim, loss or liability arising out of, or connected with the Products and services provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the charges specified in the Purchase Order for the Products and services, or parts thereof forming the basis of the Authorized User's claim, (said



amount not to exceed a total of twelve (12) months charges payable under the applicable Purchase Order) or (ii) one million dollars (\$1,000,000), whichever is greater.

b. The Authorized User may retain such monies from any amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted against the Authorized User unless Contractor at the time of the presentation of claim shall demonstrate to the Authorized User's satisfaction that sufficient monies are set aside by the Contractor in the form of a bond or through insurance coverage to cover associated damages and other costs.

c. Notwithstanding the above, neither the Contractor nor the Authorized User shall be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the Authorized User, the Contractor, or by others.

**76. INSURANCE** Contractor shall secure and maintain insurance coverage as specified in the Bid Documents and shall promptly provide documentation of specified coverages to the Authorized User. If specified, the Contractor may be required to add the Authorized User as an additional insured.

#### **THE FOLLOWING CLAUSES PERTAIN TO TECHNOLOGY & NEGOTIATED CONTRACTS**

**77. SOFTWARE LICENSE GRANT** Where Product is acquired on a licensed basis the following shall constitute the license grant:

a. **License Scope** Licensee is granted a non-exclusive, perpetual license to use, execute, reproduce, display, perform, or merge the Product within its business enterprise in the United States up to the maximum licensed capacity stated on the Purchase Order. Product may be accessed, used, executed, reproduced, displayed or performed up to the capacity measured by the applicable licensing unit stated on the Purchase Order (i.e., payroll size, number of employees, CPU, MIPS, MSU, concurrent user, workstation). Licensee shall have the right to use and distribute modifications or customizations of the Product to and for use by any Authorized Users otherwise licensed to use the Product, provided that any modifications, however extensive, shall not diminish Licensor's proprietary title or interest. No license, right or interest in any trademark, trade name, or service mark is granted hereunder.

b. **License Term** The license term shall commence upon the License Effective Date, provided, however, that where an acceptance or trial period applies to the Product, the License Term shall be extended by the time period for testing, acceptance or trial.

c. **Licensed Documentation** If commercially available, Licensee shall have the option to require the Contractor to deliver, at Contractor's expense: (i) one (1) hard copy and one (1) master electronic copy of the Documentation in a mutually agreeable format; (ii) based on hard copy instructions for access by downloading from the Internet (iii) hard copies of the Product Documentation by type of license in the following amounts, unless otherwise mutually agreed:

- Individual/Named User License - one (1) copy per License
- Concurrent Users - 10 copies per site
- Processing Capacity - 10 copies per site

Software media must be in a format specified by the Authorized User, without requiring any type of conversion.

Contractor hereby grants to Licensee a perpetual license right to make, reproduce (including downloading electronic copies of the Product) and distribute, either electronically or otherwise, copies of Product Documentation as necessary to enjoy full use of the Product in accordance with the terms of license.

d. **Product Technical Support & Maintenance** Licensee shall have the option of electing the Product technical support and maintenance ("maintenance") set forth in the Contract by giving written notice to Contractor any time during the Centralized Contract term. Maintenance term(s) and any renewal(s) thereof are independent of the expiration of the Centralized Contract term and will not automatically renew.

Maintenance shall include, at a minimum, (i) the provision of error corrections, updates, revisions, fixes, upgrade and new releases to Licensee, and (ii) Help Desk assistance with locally accessible "800" or toll free, local telephone service, or alternatively on-line Help Desk accessibility. Contractor shall maintain the Products so as to provide Licensee with the ability to utilize the Products in accordance with the Product documentation without significant functional downtime to its ongoing business operations during the maintenance term.

Authorized User shall not be required to purchase maintenance for use of Product, and may discontinue maintenance at the end of any current maintenance term upon notice to Contractor. In the event that Authorized User does not initially acquire or discontinues maintenance of licensed Product, it may, at any time thereafter, reinstate maintenance for Product without any additional penalties or other charges, by paying Contractor the amount which would have been due under the Contract for the period of time that such maintenance had lapsed, at then current NYS net maintenance rates.

e. **Permitted License Transfers** As Licensee's business operations may be altered, expanded or diminished, licenses granted hereunder may be transferred or combined for use at an alternative or consolidated site not originally specified in the license, including transfers between Agencies ("permitted license transfers"). Licensee(s) do not have to obtain the approval of Contractor for permitted license transfers, but must give thirty (30) days prior written notice to Contractor of such move(s) and certify in writing that the Product is not in use at the prior site. There shall be no additional license or other transfer fees due Contractor, provided that: i) the maximum capacity of the consolidated machine is equal to the combined individual license capacity of all licenses running at the consolidated or transferred site (e.g., named users, seats, or MIPS); or ii) if the maximum capacity of the consolidated machine is greater than the individual license capacity being transferred, a logical or physical partition or other means of restricting access will be maintained within the computer system so as to restrict use and access to the Product to that unit of licensed capacity solely dedicated to beneficial use for Licensee. In the event that the maximum capacity of the consolidated machine is greater than the combined individual license capacity of all licenses running at the consolidated or transferred site, and a logical or physical partition or other means of restricting use is not available, the fees due Contractor shall not exceed the fees otherwise payable for a single license for the upgrade capacity.

f. **Restricted Use By Outsourcers / Facilities Management, Service Bureaus / or Other Third Parties** Outsourcers, facilities management or service bureaus retained by Licensee shall have the right to use the Product to maintain Licensee's business operations, including data processing, for the time period that they are engaged in such activities, provided that: 1) Licensee gives notice to Contractor of such party, site of intended use of the Product, and means of access;

and 2) such party has executed, or agrees to execute, the Product manufacturer's standard nondisclosure or restricted use agreement which executed agreement shall be accepted by the Contractor ("Non-Disclosure Agreement"); and 3) if such party is engaged in the business of facility management, outsourcing, service bureau or other services, such third party will maintain a logical or physical partition within its computer system so as to restrict use and access to the program to that portion solely dedicated to beneficial use for Licensee. In no event shall Licensee assume any liability for third party's compliance with the terms of the Non-Disclosure Agreement, nor shall the Non-Disclosure Agreement create or impose any liabilities on the State or Licensee.

Any third party with whom a Licensee has a relationship for a state function or business operation, shall have the temporary right to use Product (e.g., JAVA Applets), provided that such use shall be limited to the time period during which the third party is using the Product for the function or business activity.

**g. Archival Back-Up and Disaster Recovery** Licensee may use and copy the Product and related Documentation in connection with:

i) reproducing a reasonable number of copies of the Product for archival backup and disaster recovery procedures in the event of destruction or corruption of the Product or disasters or emergencies which require Licensee to restore backup(s) or to initiate disaster recovery procedures for its platform or operating systems; ii) reproducing a reasonable number of copies of the Product and related Documentation for cold site storage. "Cold Site" storage shall be defined as a restorable back-up copy of the Product not to be installed until and after the declaration by the Licensee of a disaster; iii) reproducing a back-up copy of the Product to run for a reasonable period of time in conjunction with a documented consolidation or transfer otherwise allowed herein. "Disaster Recovery" shall be defined as the installation and storage of Product in ready-to-execute, back-up computer systems prior to disaster or breakdown which is not used for active production or development.

**h. Confidentiality Restrictions** The Product is a trade secret, copyrighted and proprietary product. Licensee and its employees will keep the Product strictly confidential, and Licensee will not disclose or otherwise distribute or reproduce any Product to anyone other than as authorized under the terms of Contract. Licensee will not remove or destroy any proprietary markings of Contractor.

**i. Restricted Use by Licensee** Except as expressly authorized by the terms of license, Licensee shall not:

- (i) Copy the Product;
- (ii) Cause or permit reverse compilation or reverse assembly of all or any portion of the Product;
- (iii) Export the Licensed Software in violation of any U.S. Department of Commerce export administration regulations.

**78. PRODUCT ACCEPTANCE** Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, Authorized User(s) shall have thirty (30) days from the date of delivery to accept hardware products and sixty (60) days from the date of delivery to accept all other Product. Where the Contractor is responsible for installation, acceptance shall be from completion of installation. Failure to provide notice of acceptance or rejection or a deficiency statement to the Contractor by the end of the period provided for under this clause constitutes acceptance by the Authorized User(s) as of the expiration of that period. The License Term shall be extended by the time periods allowed for trial use, testing and acceptance unless the Commissioner or Authorized User agrees to accept the Product at completion of trial use.

Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, Authorized User shall have the option to run testing on the Product prior to acceptance, such tests and data sets to be specified by User. Where using its own data or tests, Authorized User must have the tests or representative set of data available upon delivery. This demonstration will take the form of a documented installation test, capable of observation by the Authorized User, and shall be made part of the Contractor's standard documentation. The test data shall remain accessible to the Authorized User after completion of the test.

In the event that the documented installation test cannot be completed successfully within the specified acceptance period, and the Contractor or Product is responsible for the delay, Authorized User shall have the option to cancel the order in whole or in part, or to extend the testing period for an additional thirty (30) day increment. Authorized User shall notify Contractor of acceptance upon successful completion of the documented installation test. Such cancellation shall not give rise to any cause of action against the Authorized User for damages, loss of profits, expenses, or other remuneration of any kind.

If the Authorized User elects to provide a deficiency statement specifying how the Product fails to meet the specifications within the testing period, Contractor shall have thirty (30) days to correct the deficiency, and the Authorized User shall have an additional sixty (60) days to evaluate the Product as provided herein. If the Product does not meet the specifications at the end of the extended testing period, Authorized User, upon prior written notice to Contractor, may then reject the Product and return all defective Product to Contractor, and Contractor shall refund any monies paid by the Authorized User to Contractor therefor. Costs and liabilities associated with a failure of the Product to perform in accordance with the functionality tests or product specifications during the acceptance period shall be borne fully by Contractor to the extent that said costs or liabilities shall not have been caused by negligent or willful acts or omissions of the Authorized User's agents or employees. Said costs shall be limited to the amounts set forth in the Limitation of Liability Clause for any liability for costs incurred at the direction or recommendation of Contractor.

**79. AUDIT OF LICENSED PRODUCT USAGE** Contractor shall have the right to periodically audit, no more than annually, at Contractor's expense, use of licensed Product at any site where a copy of the Product resides provided that: (i) Contractor gives Licensee(s) at least thirty (30) days advance written notice, (ii) such audit is conducted during such party's normal business hours, (iii) the audit is conducted by an independent auditor chosen on mutual agreement of the parties. Contractor shall recommend a minimum of three (3) auditing/accounting firms from which the Licensee will select one (1). In no case shall the Business Software Alliance (BSA), Software Publishers Association (SPA), Software and Industry Information Association (SIIA) or Federation Against Software Theft (FAST) be used directly or indirectly to conduct audits, or be recommended by Contractor; (iv) Contractor and Licensee are each entitled to designate a representative who shall be entitled to participate, and who shall mutually agree on audit format, and simultaneously review all information obtained by the audit. Such representatives also shall be entitled to copies of all reports, data or information obtained from the audit; and (v) if the audit shows that such party is not in compliance, Licensee shall be required to purchase additional licenses or capacities necessary to bring it into compliance and shall pay for the unlicensed capacity at the NYS Net Price in effect at time of audit, or if none, then at the Contractor's U.S. Commercial list price. Once such additional licenses or capacities are purchased, Licensee shall be deemed to have been in compliance retroactively, and Licensee shall

have no further liability of any kind for the unauthorized use of the software.

## **80. OWNERSHIP/TITLE TO PROJECT DELIVERABLES**

### **a. Definitions**

(i) For purposes of this paragraph, "Products." A deliverable furnished under this Contract by or through Contractor, including existing and custom Products, including, but not limited to: a) components of the hardware environment, b) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings), whether printed in hard copy or maintained on diskette, CD, DVD or other electronic media c) third party software, d) modifications, customizations, custom programs, program listings, programming tools, data, modules, components, and e) any properties embodied therein, whether in tangible or intangible form (including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, source code, object code).

(ii) For purposes of this paragraph, "Existing Products." Tangible Products and intangible licensed Products that exist prior to the commencement of work under the Contract. Contractor bears the burden of proving that a particular product was in existence prior to the commencement of the Project.

(iii) For purposes of this paragraph, "Custom Products." Products, preliminary, final or otherwise, which are created or developed by Contractor, its Subcontractors, partners, employees or agents for Authorized User under the Contract.

**b. Title to Project Deliverables** Contractor acknowledges that it is commissioned by the Authorized User to perform the services detailed in the Purchase Order. Unless otherwise specified in writing in the Bid or Purchase Order, the Authorized User shall have ownership and license rights as follows:

#### **(i) Existing Products:**

**1. Hardware** - Title and ownership of Existing Hardware Product shall pass to Authorized User upon Acceptance.

**2. Software** - Title and ownership to Existing Software Product(s) delivered by Contractor under the Contract that is normally commercially distributed on a license basis by the Contractor or other independent software vendor proprietary owner ("Existing Licensed Product"), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with Contractor or the proprietary owner of other independent software vendor(s) (ISV). Effective upon acceptance, such Product shall be licensed to Authorized User in accordance with the Contractor or ISV owner's standard license agreement, provided, however, that such standard license, must, at a minimum: (a) grant Authorized User a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless Contractor advises Authorized User as part of Contractor's proposal that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the Authorized User's satisfaction) and distribute Existing Licensed Product to the Authorized User up to the license capacity stated in the Purchase Order or work order with all license rights necessary to fully effect the general business purpose(s) stated in the Bid or Authorized User's Purchase Order or work order, including the financing assignment rights set forth in paragraph (c) below; and (b) recognize the State of New York as the licensee where the Authorized User is a state agency, department, board, commission, office or institution. Where these rights are not otherwise covered by the ISV's owner's standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense. The Authorized User shall reproduce all copyright notices and any other legend of ownership on any copies authorized under this paragraph.

(ii.) **Custom Products:** Effective upon creation of Custom Products, Contractor hereby conveys, assigns and transfers to Authorized User the sole and exclusive rights, title and interest in Custom Product(s), whether preliminary, final or otherwise, including all trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor, its agents, employees, or Subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under a Purchase Order, project definition or work order in the course of Contractor's business. Authorized User may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of Authorized User taking exclusive ownership and title to such Products. In such case, Licensee on behalf of all Authorized Users shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purpose(s) as stated in paragraph (b)(i)(2), above.

**c. Transfers or Assignments to a Third Party Financing Agent** It is understood and agreed by the parties that a condition precedent to the consummation of the purchase (s) under the Contract may be the obtaining of acceptable third party financing by the Authorized User. The Authorized User shall make the sole determination of the acceptability of any financing proposal. The Authorized User will make all reasonable efforts to obtain such financing, but makes no representation that such financing has been obtained as of the date of Bid receipt. Where financing is used, Authorized User may assign or transfer its rights in Licensed Products (existing or custom) to a third party financing entity or trustee ("Trustee") as collateral where required by the terms of the financing agreement. Trustee's sole rights with respect to transferability or use of Licensed Products shall be to exclusively sublicense to Authorized User all of its Licensee's rights under the terms and conditions of the License Agreement; provided, further, however, in the event of any termination or expiration of such sublicense by reason of payment in full, all of Trustee's rights in such Licensed Product shall terminate immediately and Authorized User's prior rights to such Existing Licensed Product shall be revived.

**d. Sale or License of Custom Products Involving Tax-Exempt Financing (i.e., Certificates of Participation - COPS)** The Authorized User's sale or other transfer of Custom Products which were acquired by the Authorized User using third party, tax-exempt financing may not occur until such Custom Products are, or become, useable. In the event that the Contractor wishes to obtain ownership rights to Custom Product(s), the sale or other transfer shall be at fair market value determined at the time of such sale or other transfer, and must be pursuant to a separate written agreement in a form acceptable to the Authorized User which complies with the terms of this paragraph.

**e. Contractor's Obligation with Regard to ISV (Third Party) Product** Where Contractor furnishes Existing Licensed Product(s) as a Project Deliverable, and sufficient rights necessary to effect the purposes of this section are not otherwise provided in the Contractor or ISV's standard license agreement, Contractor shall be responsible for obtaining from the ISV third party proprietary owner/developer the rights set forth herein to the benefit of the Authorized User at Contractor's sole cost and expense.

**81. PROOF OF LICENSE** The Contractor must provide to each Licensee who places a Purchase Order either: (i) the Product developer's certified License Confirmation Certificates in the name of such Licensee; or (ii) a written confirmation from the Proprietary owner accepting Product invoice as proof of license. Contractor shall



submit a sample certificate, or alternatively such written confirmation from the proprietary developer. Such certificates must be in a form acceptable to the Licensee.

**82. PRODUCT VERSION** Purchase Orders shall be deemed to reference Manufacturer's most recently released model or version of the Product at time of order, unless an earlier model or version is specifically requested in writing by Authorized User and Contractor is willing to provide such version.

**83. CHANGES TO PRODUCT OR SERVICE OFFERINGS**

**a. Product or Service Discontinuance** Where Contractor is the Product Manufacturer/Developer, and Contractor publicly announces to all U.S. customers ("date of notice") that a Product is being withdrawn from the U.S. market or that maintenance service or technical support provided by Contractor ("withdrawn support") is no longer going to be offered, Contractor shall be required to: (i) notify the Commissioner, each Licensee and each Authorized User then under contract for maintenance or technical support in writing of the intended discontinuance; and (ii) continue to offer Product or withdrawn support upon the Contract terms previously offered for the greater of: a) the best terms offered by Contractor to any other customer, or b) not less than twelve (12) months from the date of notice; and (iii) at Authorized User's option, provided that the Authorized User is under contract for maintenance on the date of notice, either: provide the Authorized User with a Product replacement or migration path with at least equivalent functionality at no additional charge to enable Authorized User to continue use and maintenance of the Product.

In the event that the Contractor is not the Product Manufacturer, Contractor shall be required to: (i) provide the notice required under the paragraph above, to the entities described within five (5) business days of Contractor receiving notice from the Product Manufacturer, and (ii) include in such notice the period of time from the date of notice that the Product Manufacturer will continue to provide Product or withdraw support.

The provisions of this subdivision (a) shall not apply or eliminate Contractor's obligations where withdrawn support is being provided by an independent Subcontractor. In the event that such Subcontractor ceases to provide service, Contractor shall be responsible for subcontracting such service, subject to state approval, to an alternate Subcontractor.

**b. Product or Service Re-Bundling** In the event that Contractor is the Product manufacturer and publicly announces to all U.S. customers ("date of notice") that a Product or maintenance or technical support offering is being re-bundled in a different manner from the structure or licensing model of the prior U.S. commercial offering, Contractor shall be required to: (i) notify the State and each Authorized User in writing of the intended change; (ii) continue to provide Product or withdrawn support upon the same terms and conditions as previously offered on the then-current NYS Contract for the greater of: a) the best terms offered by Contractor to any other customer, or b) not less than twelve (12) months from the date of notice; and (iii) shall submit the proposed rebundling change to the Commissioner for approval prior to its becoming effective for the remainder of the Contract term. The provisions of this section do not apply if the Contractor is not the Product manufacturer.

**84. NO HARDSTOP/PASSIVE LICENSE MONITORING**

Unless an Authorized User is otherwise specifically advised to the contrary in writing at the time of order and prior to purchase, Contractor hereby warrants and represents that the Product and all Upgrades do not and will not contain any computer code that would

disable the Product or Upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as "time bombs," "time locks," or "drop dead" devices) or that would permit Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a "trap door" device). Contractor agrees that in the event of a breach or alleged breach of this provision that Authorized User shall not have an adequate remedy at law, including monetary damages, and that Authorized User shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which Authorized User shall be entitled.

**85. SOURCE CODE ESCROW FOR LICENSED PRODUCT**

If Source Code or Source Code escrow is offered by either Contractor or Product manufacturer or developer to any other commercial customers, Contractor shall either: (i) provide Licensee with the Source Code for the Product; or (ii) place the Source Code in a third party escrow arrangement with a designated escrow agent who shall be named and identified to the State, and who shall be directed to release the deposited Source Code in accordance with a standard escrow agreement acceptable to the State; or (iii) will certify to the State that the Product manufacturer/developer has named the State, acting by and through the Authorized User, and the Licensee, as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named and identified to the State and Licensee, and who shall be directed to release the deposited Source Code in accordance with the terms of escrow. Source Code, as well as any corrections or enhancements to such source code, shall be updated for each new release of the Product in the same manner as provided above and such updating of escrow shall be certified to the State in writing. Contractor shall identify the escrow agent upon commencement of the Contract term and shall certify annually that the escrow remains in effect in compliance with the terms of this paragraph.

The State may release the Source Code to Licensees under this Contract who have licensed Product or obtained services, who may use such copy of the Source Code to maintain the Product.

**FOR NEGOTIATED CONTRACTS THE FOLLOWING CLAUSES ARE RESERVED BECAUSE BIDDING DOES NOT APPLY:**

**Clauses: 7, 8, 9, 10, 11, 12, 13, 16, 15, 21, 25, 26, 28, 29, 30, 31, 32, 33, 36, 49, 50, 52, 54 and 37**



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## **APPENDIX C**

**Invitation for Bids 2018-06**



# Corrections and Community Supervision

## INVITATION FOR BIDS (IFB) 2018-06 URINALYSIS ANALYZERS

Issue Date: May 1, 2018

Bid Due Date & Time: May 23, 2018 – 3:00 p.m.

Contract Period: September 1, 2018 – August 31, 2023

### **Designated Contact**

Name: Marla Henriquez-Nepaulsingh  
Phone: (518) 436-7886 ext. 3135  
Email: [doccscontracts@doccs.ny.gov](mailto:doccscontracts@doccs.ny.gov)

### **Alternate Designated Contact**

Name: David Gambacorta  
Phone: (518) 436-7886 ext. 3135  
Email: [doccscontracts@doccs.ny.gov](mailto:doccscontracts@doccs.ny.gov)

## BID SIGNATURE PAGE

The bid must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this INVITATION FOR BIDS, Appendix A (Standard Clauses For New York State Contracts), Appendix B (General Specifications), and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, bidder affirms that it understands and agrees to comply with DOCCS procedures relative to permissible contacts as required by State Finance Law §139-j(3) and §139-j(6)(b). Bidders are requested to retain Appendix A and Appendix B for future reference.

Procurement Lobbying information may be accessed at:

<http://www.ogs.ny.gov/aboutogs/regulations/defaultAdvisoryCouncil.html>

Legal Business Name of Company Bidding:				NYS Vendor Identification Number: (see NYS vendor file registration clause)	
D/B/A – Doing Business As (if applicable):				Federal Tax Identification Number: (do not use Social Security Number)	
Street	City	State	Zip	County	
<p>If applicable, place an "x" next to each that apply:</p> <p style="margin-left: 40px;"> <input type="checkbox"/> New York State Small Business  <input type="checkbox"/> New York State Certified Minority-owned Business Enterprise (MBE)  <input type="checkbox"/> New York State Certified Woman-owned Business Enterprise (WBE)         </p> <p>Vendor Responsibility Questionnaire Filed Online: <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Do you understand and is your firm capable of meeting the insurance requirements to enter into a contract with New York State? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Does your bid proposal meet all the requirements of this solicitation? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>					
<p>If you are not bidding, place an "x" in the box and return this page only.</p> <p><input type="checkbox"/> WE ARE UNABLE TO BID AT THIS TIME BECAUSE _____</p> <p>_____</p> <p>_____</p>					
Phone: Fax:			Toll Free Phone:		
E-mail Address:			Company Web Site:		
Bidder's Signature:			Printed or Typed Name:		
Date:			Title:		

**RETURN THIS PAGE AS PART OF THE BID**

DOCCS 00159

**INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT**

STATE OF

}

COUNTY OF

}

SS.:

}

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20 \_\_, before me personally appeared

\_\_\_\_\_, known to me to be the person who executed the foregoing

instrument, who, being duly sworn by me did depose and say that **\_he** resides at

\_\_\_\_\_.

Town of \_\_\_\_\_,

County of \_\_\_\_\_, State of \_\_\_\_\_; and further that:

**[Check One]**☐ **If an individual):** **\_he** executed the foregoing instrument in his/her name and on his/her own behalf.

☐ **If a corporation):** **\_he** is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, **\_he** is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, **\_he** executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

☐ **If a partnership):** **\_he** is the \_\_\_\_\_ of \_\_\_\_\_, the partnership described in said instrument; that, by the terms of said partnership, **\_he** is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, **\_he** executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

☐ **If a limited liability company):** **\_he** is a duly authorized member of \_\_\_\_\_, LLC, the limited liability company described in said instrument; that **\_he** is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, **\_he** executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

\_\_\_\_\_  
**Notary Public**  
**Registration No.**

## CHECKLIST

### IFB 2018-06 URINALYSIS ANALYZERS

All bidders must complete the checklist presented below and submit the following forms listed in the checklist as required for each bid submission.

#### SUBMISSION DOCUMENTS PACKAGE (SIGNATURES REQUIRED)

- ☐ This Checklist
- ☐ Completed Bid Signature Page (pages 2-3)
- ☐ Bidder's Federal Tax Identification Number
- ☐ NYS Vendor Identification Number
- ☐ Bidder's Signature
- ☐ Individual, Corporation, Partnership, or LLC Acknowledgement (*must be notarized*)
- ☐ Completed Procurement Lobbying Certification (page 8)
- ☐ Bid Response / Signature Page (pages 2)
- ☐ Bid Cost Sheet (pages 28-30)
- ☐ Notes to Bidders and Questions (pages 31-32)
- ☐ Vendor Responsibility Questionnaire – Check one of the following:
- ☐ Paper Submission
- OR**
- ☐ Electronic Filing - Certified Date: \_\_\_\_\_  
(*Must be certified within the last 6 months*)
- ☐ Non-Disclosure Form (Attachment B)
- ☐ Vendor Assurance of No Conflict of Interest or Detrimental Effect (Attachment C)
- ☐ Contractor Certification Forms (*Must Be Notarized*)
- ☐ Form ST-220-TD (*File Directly with the Department of NYS Tax & Finance*)
- ☐ Form ST-220-CA (*Submit with Bid*)
- ☐ MWBE – Equal Employment Opportunity Policy Statement (Appendix C)
- ☐ Equal Employment Opportunity (EEO) Staffing Plan (Appendix C)

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Name of Company: \_\_\_\_\_

**RETURN THIS PAGE AS PART OF THE BID**

## GENERAL INFORMATION

### PURPOSE:

This Invitation for Bids (IFB) is issued by the New York State Department of Corrections and Community Supervision (DOCCS). The purpose of this bid is for DOCCS to obtain competitive prices for reagent rentals of bench top urinalysis analyzer services to be used in its correctional facilities for inmates. The bidder must also include the installation, training, technical support, and maintenance of equipment in DOCCS facilities.

### SPECIFICATIONS:

Detailed specifications for this solicitation are provided in the Scope of Services, page 25-26, in this IFB.

DOCCS intends to award one vendor a contract for this service. The term of this contract will be for a period of five (5) years, effective September 1, 2018 through August 31, 2023.

### INQUIRIES / ISSUING OFFICE:

All inquiries concerning this specification will be addressed to the following **Designated Contact**:

#### **PRIMARY CONTACT**

Marla Henriquez-Nepaulsingh  
 NYSDOCCS  
 Division of Support Operations / Contract  
 Procurement Unit  
 550 Broadway  
 Menands, NY 12204  
 Phone No.: 518-436-7886, ext. 3135  
 E-Mail: Doccscontracts@doccs.ny.gov

#### **SECONDARY CONTACT**

David Gambacorta  
 NYSDOCCS  
 Division of Support Operations / Contract  
 Procurement Unit  
 550 Broadway  
 Menands, NY 12204  
 Phone No.: 518-436-7886, ext. 3135  
 E-Mail: Doccscontracts@doccs.ny.gov

**Contacting someone else may result in rejection of bid – see “Procurement Lobbying Act”.**

All questions should be submitted in writing, citing the particular bid sections and paragraph number. Bidders are cautioned to read this document thoroughly to become familiar with all aspects of the bid. Prospective Bidders should note that all clarifications and exceptions including those relating to the terms and conditions of the contract are to be resolved prior to the submission of a bid. Answers to all questions of a substantive nature will be given to all Prospective Bidders in the form of a formal addendum which will become part of the ensuing contract. Bidders entering into a contract with the State are expected to comply with all the terms and conditions contained herein.

### KEY EVENTS/DATES:

Invitation for Bids (IFB) Issued	May 1, 2018
Written Bidders' Questions Deadline	May 11, 2018
DOCCS Issues Answers to Questions (estimated)	May 15, 2018
Bids Due to DOCCS	May 23, 2018
Tentative Award Made (estimated)	May 25, 2018
Contract Start Date	September 1, 2018

### QUALIFICATION OF BIDDERS:

Bidders must be actively engaged in reagents drug testing/urinalysis analyzer services for a minimum of five (5) years.



## GENERAL INFORMATION

DOCCS reserves the right to investigate or make any inquiry into the capabilities of any bidder to properly perform under any resultant contract. See "Performance Qualifications," "Disqualification for Past Performance" and "Employees/Subcontractors/Agents" in Appendix B, Specifications.

### **REQUIREMENTS:**

- A. Contractor must be able to perform all of the services outlined in the, Scope of Services.
- B. Contractor will comply with all standards and appropriate regulations governing contracts with the State of New York (Appendix A – January 2014).
- C. No illegal drug use of any type or alcoholic beverages by the Contractor or its personnel shall be permitted in the performance of the contract.
- D. Contractor agrees to take all steps reasonably necessary to protect the secrecy of the Confidential Information, and to prevent the Confidential Information from falling into the public domain or into the possession of unauthorized persons. Such steps shall include keeping Confidential Information stored where only authorized personnel would have access.

**IMPORTANT NOTICE TO POTENTIAL BIDDERS:** Receipt of these bid documents does not indicate that the NYS Department of Corrections and Community Supervision (DOCCS) – Contract Procurement Unit (CPU) has pre-determined your company's qualifications to receive a contract award. Such determination will be made after the bid opening and will be based on our evaluation of your bid submission compared to the specific requirements and qualifications contained in these bid documents.

### **NOTICE TO BIDDERS:**

The DOCCS - Contract Procurement Unit (CPU) will receive bids pursuant to the provisions of Article XI of the State Finance Law or the provisions of the State Printing and Public Documents Law. The following procedures shall be used for bid submittals:

#### **1. BID PREPARATION**

Prepare your bid on this form using indelible ink. Print the name of your company on each page of the bid in the block provided. One copy of the bid is required, unless otherwise specified herein.

#### **2. BID SUBMISSION**

When submitting your bid, please submit complete original bid package, including all bidder questions and required certifications. You are not required to return Appendix A and Appendix B to this office. You may keep all those pages for your own reference.

#### **3. BID DELIVERY**

**Bidders assume all risks for timely, properly submitted deliveries.** Bidders are strongly encouraged to arrange for delivery of bids to DOCCS - CPU prior to the date of the bid opening. **LATE BIDS may be rejected. E-mail bid submissions are not acceptable and will not be considered.**

- **Bid envelopes**

The envelope containing a bid should be marked "**BID ENCLOSED**" and state the **Bid Number, Bid Opening Date, and Time** on the envelope containing the sealed bid. Failure to complete all information on the bid envelope may necessitate the premature opening of the bid and may compromise confidentiality. See "Bid Submission" in Appendix B, General Specifications. Bids shall be delivered to:

State of New York  
Department of Corrections and Community Supervision  
Division of Support Operations/Contract Procurement Unit  
Attention: Marla Henriquez-Nepaulsingh  
550 Broadway  
Menands, NY 12204  
IFB #2018-06 – Urinalysis Analyzers

## GENERAL INFORMATION

- **Hand deliveries**

Bidders must allow extra time to comply with the security procedures which may be in effect when hand delivering bids or using deliveries by independent courier services. **Bidders assume all risks for timely, properly submitted deliveries.**

### **NON-COLLUSIVE BIDDING CERTIFICATION:**

**(Reference: State Finance Law Section 139-d and Appendix A, Clause 7)**

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

(1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

(3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not submit a bid for the purpose of restricting competition.

In the event that the bidder is unable to certify as stated above, the bidder shall provide a signed statement which sets forth in detail the reasons why the bidder is unable to furnish the certificate as required in accordance with State Finance Law Section 139-d(1)(b).

### **PROCUREMENT LOBBYING ACT:**

#### **SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING**

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between DOCCS – CPU and an Offerer/bidder during the procurement \*process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit offers/bids through final award and approval of the Procurement Contract by DOCCS – CPU and if applicable, the Office of General Services, and/or the Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a). Designated staff, as of the date hereof, is identified on the first page of this solicitation. DOCCS – CPU employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four-year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the website: <http://ogs.ny.gov/Aboutogs/regulations/defaultAdvisoryCouncil.html>.

### **PROCUREMENT LOBBYING TERMINATION:**

DOCCS - CPU reserves the right to terminate this contract in the event it is found that the certification filed by the Offerer/bidder in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, DOCCS – CPU may exercise its termination right by providing written notification to the Offerer/bidder in accordance with the written notification terms of this contract.

## PROCUREMENT LOBBYING CERTIFICATION

By signing, the offerer/bidder affirms that it understands and agrees to comply with the NYS Department of Corrections and Community Supervision (DOCCS) procedures relative to permissible contacts, as required by State Finance Law §139-j and §139-k.

Procurement Lobbying information can be accessed at:

<http://www.ogs.ny.gov/aboutogs/regulations/advisoryCouncil/sfl139-j.htm> and

<http://www.ogs.ny.gov/aboutogs/regulations/advisoryCouncil/sfl139-k.htm>

Offeror affirms that it understands and agrees to comply with the procedures of the Government Entity relative to permissible Contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contractor Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### Prior Non-Responsibility Determinations – State Finance Law §139-k

1. Has any Government Entity made a finding of non-responsibility against this organization/company? **No** **Yes**
2. If yes, was the basis for the finding of non-responsibility due to a violation of SFL§139-j or due to the intentional provision of false or incomplete information to a Government Entity? **No** **Yes**
3. Has any Government Entity terminated or withheld a procurement contract with this organization/company due to the intentional provision of false or incomplete information? **No** **Yes**

*If yes to any of the above questions, provide complete details on a separate page and attach.*

### Offerer Certification:

I certify that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

### Procurement Lobbying Termination

DOCCS reserves the right to terminate this contract in the event it is found that the certification filed by the Offeror/bidder in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, DOCCS may exercise its termination right by providing written notice to the Offeror/bidder in accordance with the written notification terms of the contract.

**RETURN THIS PAGE AS PART OF THE BID**

DOCCS 00165

## GENERAL INFORMATION

### **TAX LAW § 5-A:**

TAX LAW § 5-A (Amended April 26, 2006):

Tax Law § 5-a, as amended on April 26, 2006, requires certain contractors who are awarded state contracts for commodities and/or services valued at more than REDACTED (over the full term of the contract, excluding renewals) to certify to the Department of Taxation and Finance (DTF) they are registered to collect New York State (NYS) and local sales and compensating use taxes. The law applies to contracts where the total amount of the contractor's sales delivered into NYS exceed REDACTED for the four quarterly periods immediately preceding the quarterly period when the certification is made; and with respect to any affiliates and subcontractors whose sales delivered into NYS also exceed REDACTED in the same manner as noted above for the contractor.

This law imposes upon certain contractors the obligation to certify whether or not the contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use tax. The contractors must certify to DTF that each affiliate and subcontractor exceeding the sales threshold is registered with DTF to collect such State and local sales and compensating use taxes. The law prohibits the Comptroller, or other approving agency, from approving a contract to a vendor who is not registered in accordance with the law.

There are two (2) Contractor certification forms, with instructions, attached to this bid. **Form ST-220-TD is to be removed from this bid and submitted directly to DTF. Submission to DTF is a one-time occurrence. If you have already submitted this form to DTF for other bidding opportunities, you do not need to submit the form attached to this bid. If, however, any certification information changes, a new ST-220-TD must be filed with DTF. Form ST-220-CA must be completed and submitted with this bid. This form certifies to the procuring agency that the contractor has filed ST-220-TD with DTF in compliance with the law.**

Bidders should complete and submit the certification forms within two business days of request (if the forms are not submitted to DTF and/or and returned with bid). Bidders shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law, as failure to do so may render a bidder non-responsive and non-responsible.

Vendors may call DTF at 1-800-698-2909 for any and all questions relating to Tax Law § 5-a and relating to a company's registration status with DTF. For additional information and frequently asked questions, please refer to the DTF web site: <http://www.tax.ny.gov>.

### **TERMINATION FOR VIOLATION OF Revised Tax Law 5a:**

NYS DOCCS reserves the right to terminate this contract in the event it is found that the certification filed by the Contractor in accordance with § 5-a of the Tax Law is not timely filed during the term of the contract or the certification furnished was intentionally false or intentionally incomplete. Upon such finding, (facility name) may exercise its termination right by providing written notification to the Contractor.

### **DISPUTE RESOLUTION POLICY:**

It is the policy of the DOCCS – CPU and the Office of the State Comptroller to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to NYS bid solicitations or contract awards. DOCCS – CPU and the Office of the State Comptroller encourages vendors to seek resolution of disputes through consultation with DOCCS – CPU staff. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes.

### **DEBRIEFING:**

Bidders will be accorded fair and equal treatment with respect to their opportunity for debriefing. Disclosure of the content of competing bids other than statistical tabulations of bids received in response to an IFB, is prohibited prior to contract award. Prior to final contract award, DOCCS-CPU shall, upon request, provide a debriefing which would be limited to review of that bidder's proposal or bid. Requests for a debriefing prior to final contract award by an unsuccessful bidder(s) must be addressed to DOCCS - CPU in writing. The debriefing prior to final contract award must be requested in writing within 15 calendar days of notification that the bidder's submission was unsuccessful.

After final contract award, DOCCS-CPU shall, upon request, provide a debriefing to any bidder that responded to the IFB, regarding the reason that the proposal or bid submitted by the unsuccessful bidder was not selected for a contract award. Requests for debriefing by an unsuccessful bidder(s) must be addressed to DOCCS-CPU in writing. The post-award debriefing should be required in writing by the bidder within 30 calendar days of contract approval by OSC.

## GENERAL INFORMATION

### **APPENDIX A:**

Appendix A, Standard Clauses For New York State Contracts, dated January 2014, attached hereto, is hereby expressly made a part of this Bid Document as fully as if set forth at length herein. **Please retain this document for future reference.**

### **APPENDIX B:**

Appendix B, General Specifications (Commodities and Non-Technology Services), dated August 2012, attached hereto, is hereby expressly made a part of this Bid Document as fully as if set forth at length herein and shall govern any situations not covered by this Bid Document or Appendix A. **Please retain this document for future reference.**

### **APPENDIX C:**

Appendix C, CONTRACTOR REQUIREMENTS FOR EEO AND MWBE, attached hereto expressly made a part of this Bid Document as fully as if set forth at length herein and shall govern any situations not covered by this Bid Document or Appendix A. **Please retain this document for future reference.**

### **CONFLICT OF TERMS AND CONDITIONS:**

Conflicts between documents shall be resolved in the following order of precedence:

- a. Appendix A
- b. This Invitation for Bids
- c. Appendix B
- d. Appendix C
- e. Bidder's Bid

### **CONTRACTOR REQUIREMENTS FOR EEO AND MWBE:**

CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

New York State Law: Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations DOCCS is required to promote opportunities for the maximum feasible participation of New York State-certified Minority and Women-owned Business Enterprises ("MWBEs") and the employment of minority group members and women in the performance of DOCCS contracts.

#### **Business Participation Opportunities for MWBEs**

For purposes of this solicitation, DOCCS hereby establishes an overall goal of 0% for MWBE participation, 0% for New York State-certified Minority-owned Business Enterprise ("MBE") participation and 0% for New York State-certified Women-owned Business Enterprise ("WBE") participation (based on the current availability of MBEs and WBEs). A contractor ("Contractor") on any contract resulting from this procurement ("Contract") must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this IFB, the bidder agrees that DOCCS may withhold payment pursuant to any Contract awarded as a result of this IFB pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how DOCCS will evaluate a Contractor's "good faith efforts," refer to 5 NYCRR § 142.8.

The bidder understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal.

The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract.

In accordance with 5 NYCRR § 142.13, the bidder further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this solicitation, such finding constitutes a breach of contract and DOCCS may withhold payment as liquidated damages.



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Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a bidder agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System ("NYSCS"), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a bidder may arrange to provide such evidence via a non-electronic method by contacting the designated contact(s) for this procurement. Additionally, a bidder will be required to submit the following documents and information as evidence of compliance with the foregoing:

1. An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to DOCCS for review and approval.

DOCCS will review the submitted MWBE Utilization Plan and advise the bidder of DOCCS acceptance or issue a notice of deficiency within 30 days of receipt.

2. If a notice of deficiency is issued, the bidder will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to DOCCS, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by DOCCS to be inadequate, DOCCS shall notify the bidder and direct the bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

DOCCS may disqualify a bidder as being non-responsive under the following circumstances:

- a) If a bidder fails to submit an MWBE Utilization Plan;
- b) If a bidder fails to submit a written remedy to a notice of deficiency;
- c) If a bidder fails to submit a request for waiver; or
- d) If DOCCS determines that the bidder has failed to document good faith efforts.

The successful bidder will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to DOCCS, but must be made no later than prior to the submission of a request for final payment on the Contract.

The successful bidder will be required to submit a quarterly M/WBE Contractor Compliance & Subcontractor Payment Report to DOCCS, by the 10<sup>th</sup> day following each end of quarter as applicable over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

### **Equal Employment Opportunity Requirements**

By submission of a bid or proposal in response to this solicitation, the bidder agrees with all of the terms and conditions of Appendix A – Standard Clauses for All New York State Contracts including Clause 12 - Equal Employment Opportunities for Minorities and Women. The bidder is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the bidder, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The bidder will be required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement to DOCCS with its bid or proposal.

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If awarded a Contract, bidder shall submit a Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by DOCCS on a quarterly basis as required during the term of the Contract.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

**Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.**

### **USE OF SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES IN CONTRACT PERFORMANCE**

Article 17-B of the Executive Law enacted in 2014 acknowledges that Service-Disabled Veteran-Owned Businesses (SDVOBs) strongly contribute to the economies of the State and the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. SDVOBs can be readily identified on the directory of certified businesses at [http://ogs.ny.gov/Core/docs/CertifiedNYS\\_SDVOB.pdf](http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf).

For purposes of this procurement, the DOCCS hereby establishes an overall goal of 0% for SDVOB participation based on the current availability of qualified SDVOBs. Bidders/proposers need to be aware that all authorized users of this contract will be strongly encouraged to the maximum extent practical and consistent with legal requirements of the State Finance Law and the Executive Law to use responsible and responsive SDVOBs in purchasing and utilizing commodities, services and technology that are of equal quality and functionality to those that may be obtained from non-SDVOBs. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses consistent with current State law.

Utilizing SDVOBs in State contracts will help create more private sector jobs, rebuild New York State's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its SDVOB partners. SDVOBs will promote the contractor's optimal performance under the contract, thereby fully benefiting the public-sector programs that are supported by associated public procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of SDVOBs by its contractors. The State, therefore, expects bidders/proposers to provide maximum assistance to SDVOBs in their contract performance. The potential participation by all kinds of SDVOBs will deliver great value to the State and its taxpayers.

### **FREEDOM OF INFORMATION LAW / TRADE SECRETS:**

During the evaluation process, the content of each bid will be held in confidence and details of any bid will not be revealed (except as may be required under the Freedom of Information Law or other State law). The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. This exemption would be effective both during and after the evaluation process.

Should you feel your firm's bid contains any such trade secrets or other confidential or proprietary information, you must submit a request to exempt such information from disclosure. Such request must be in writing, must state the reasons why the information should be exempt from disclosure and must be provided at the time of submission of the subject information.

Requests for exemption of the entire contents of a bid from disclosure have generally not been found to be meritorious and are discouraged. Kindly limit any requests for exemption of information from disclosure to bona fide trade secrets or specific information, the disclosure of which would cause a substantial injury to the competitive position of your firm.

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### **NEW YORK STATE VENDOR FILE REGISTRATION:**

Prior to being awarded a contract pursuant to this Solicitation, the Bidder(s) and any designated authorized resellers who accept payment directly from the State, must be registered in the New York State Vendor File (Vendor File) administered by the Office of the State Comptroller (OSC). This is a central registry for all vendors who do business with New York State Agencies and the registration must be initiated by a State Agency. Following the initial registration, unique New York State ten-digit vendor identification numbers will be assigned to your company and to each of your authorized resellers (if any) for usage on all future transactions with New York State. Additionally, the Vendor File enables vendors to use the Vendor Self-Service application to manage all vendor information in one central location for all transactions related to the State of New York. If Bidder is already registered in the New York State Vendor File, list the ten-digit vendor ID number on the Bid Proposal Form (Attachment 1). Authorized resellers already registered should list the ten-digit vendor ID number along with the authorized reseller information.

If the Bidder is not currently registered in the Vendor File and is recommended for award, DOCCS shall request completion of OSC Substitute W-9 Form. A fillable form with instructions can be found at the link below. In addition, if authorized resellers are to be used, an OSC Substitute W-9 form should be completed by each of the designated authorized resellers and submitted to the Office of General Services Business Services Center. The Office of General Services Business Services Center will initiate the vendor registration process for all Bidders recommended for Contract Award and their authorized resellers. Once the process is initiated, registrants will receive an email from OSC that includes the unique ten-digit vendor identification number assigned to the company and instructions on how to enroll in the online Vendor Self-Service application. For more information on the vendor file please visit the following website:

[http://www.osc.state.ny.us/vendor\\_management](http://www.osc.state.ny.us/vendor_management)

Form to be completed: [http://www.osc.state.ny.us/vendors/forms/ac3237\\_fe.pdf](http://www.osc.state.ny.us/vendors/forms/ac3237_fe.pdf)

### **NYS VENDOR RESPONSIBILITY QUESTIONNAIRE:**

DOCCS conducts a review of prospective contractors ("Bidders") to provide reasonable assurances that the Bidder is responsive and responsible. A Questionnaire is used for non-construction contracts and is designed to provide information to assess a Bidder's responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. By submitting a bid, Bidder agrees to fully and accurately complete the "Questionnaire." The Bidder acknowledges that the State's execution of the Contract will be contingent upon the State's determination that the Bidder is responsible, and that the State will be relying upon the Bidder's responses to the Questionnaire when making its responsibility determination.

DOCCS recommends each Bidder file the required Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, please refer to the VendRep System Instructions and User Support for Vendors available at the Office of the State Comptroller's (OSC) website, [http://www.osc.state.ny.us/vendrep/vendor\\_index.htm](http://www.osc.state.ny.us/vendrep/vendor_index.htm) or to enroll, go directly to the VendRep System online at <https://portal.osc.state.ny.us>

OSC provides direct support for the VendRep System through user assistance, documents, online help, and a help desk. The OSC Help Desk contact information is located at <http://www.osc.state.ny.us/portal/contactbuss.htm>. Bidders opting to complete the paper questionnaire can access this form and associated definitions via the OSC website at: [http://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](http://www.osc.state.ny.us/vendrep/forms_vendor.htm)

The Contractor must remain a responsible vendor throughout the duration of the contract and, if at any time the Contractor is found to be not responsible or there is a question as to the vendor's responsibility, any activities pursuant to the contract may be suspended. Finally, the contract may be terminated following a finding of non-responsibility.

To assist the State in determining the responsibility of the Bidder, the Bidder should complete and certify (or recertify) the Questionnaire no more than six (6) months prior to the bid due date.

A Bidder's Questionnaire cannot be viewed by DOCCS until the Bidder has certified the Questionnaire. It is recommended that all Bidders become familiar with all of the requirements of the Questionnaire in advance of the bid opening to provide sufficient time to complete the Questionnaire.



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The Bidder agrees that if it is found by the State that the Bidder's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, DOCCS may terminate the Contract. In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

The CONTRACTOR shall at all times during the Contract term remain responsible. The CONTRACTOR agrees, if requested by the Commissioner of DOCCS or his designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

The DOCCS Commissioner or his designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the DOCCS Commissioner or his designee issues a written notice authorizing a resumption of performance under the Contract.

### **CONFLICT OF INTEREST:**

Bidder must disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers of the Respondent or former officers and employees of the Agencies and their Affiliates, in connection with your rendering services enumerated in this IFB. If a conflict does or might exist, please describe how your Staffing Firm would eliminate or prevent it. Indicate what procedures will be followed to detect, notify the Agencies of, and resolve any such conflicts.

Bidder must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, "Commission"), and if so, a brief description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

Additionally, a bidder will be required to submit the ***Vendor Assurance of No Conflict of Interest or Detrimental Effect*** form located within this IFB as evidence of compliance with the foregoing.

### **PUBLIC OFFICERS LAW:**

Contractors, consultants, vendors, and subcontractors may hire former State Agency or Authority employees. However, as a general rule and in accordance with New York Public Officers Law, former employees of the State Agency or Authority may neither appear nor practice before the State Agency or Authority, nor receive compensation for services rendered on a matter before the State Agency or Authority, for a period of two years following their separation from State Agency or Authority service. In addition, former State Agency or Authority employees are subject to a "lifetime bar" from appearing before the State Agency or Authority or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with the State Agency or Authority.

### **ETHICS REQUIREMENTS:**

The Contractor and its Subcontractors shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively, the "Ethics Requirements"). The Contractor certifies that all of its employees and those of its Subcontractors who are former employees of the State and who are assigned to perform services under this Contract shall be assigned in accordance with all Ethics Requirements. During the Term, no person who is employed by the Contractor or its Subcontractors and who is disqualified from providing services under this Contract pursuant to any Ethics Requirements may share in any net revenues of the Contractor or its Subcontractors derived from this Contract. The Contractor shall identify and provide the State with notice of those employees of the Contractor and its Subcontractors who are former employees of the State that will be assigned to perform services under this Contract, and make sure that such employees comply with all

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applicable laws and prohibitions. The State may request that the Contractor provide it with whatever information the State deems appropriate about each such person's engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The State shall have the right to withdraw or withhold approval of any Subcontractor if utilizing such Subcontractor for any work performed hereunder would be in conflict with any of the Ethics Requirements. The State shall have the right to terminate this Contract at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.

### **SUBCONTRACTING:**

The Contractor agrees not to subcontract any of its services, unless as indicated in its bid, without the prior written approval of the DOCCS. Approval shall not be unreasonably withheld upon receipt of written request to subcontract.

The Contractor may arrange for a portion/s of its responsibilities to be subcontracted to qualified, responsible subcontractors, subject to approval of the DOCCS. If the Contractor determines to subcontract a portion of the services, the subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance must be fully explained by the Contractor to the DOCCS. As part of this explanation, the subcontractor must submit to the DOCCS a completed *Vendor Assurance of No Conflict of Interest or Detrimental Effect* form, as required by the Contractor prior to execution of a contract.

The Contractor retains ultimate responsibility for all services performed under a contract.

All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of this IFB. Unless waived in writing by DOCCS, all subcontracts between the Contractor and subcontractors shall expressly name DOCCS as the sole intended third party beneficiary of such subcontract. DOCCS reserves the right to review and approve or reject any subcontract, as well as any amendment to said subcontract(s), and this right shall not make DOCCS a party to any subcontract or create any right, claim, or interest in the subcontractor or proposed subcontractor against DOCCS.

DOCCS reserves the right, at any time during the contract term to verify that the written subcontract between the Contractor and subcontractors is in compliance with all of the provisions of this Section and any subcontract provisions contained in this IFB.

The Contractor shall give DOCCS immediate notice in writing of the initiation of any legal action or suit which relates in any way to a subcontract with a subcontractor or which may affect the performance of the Contractor's duties under a contract. Any subcontract shall not relieve the Contractor in any way of any responsibility, duty and/or obligation of a contract.

If at any time during performance under the contract the total compensation to a subcontractor exceeds or is expected to exceed REDACTED that subcontractor shall be required to submit and certify a Vendor Responsibility Questionnaire.

### **PRICE:**

Bidders must submit pricing using the Bid Cost Sheet (see page 27). Bidders are required to submit pricing for all line items to be considered for contract award. Any alteration to the Bid Cost Sheet may result in the disqualification of bid.

DOCCS conducts approximately 340,000 scans (84,165 x 4 + 3,340) for illicit substances using 5 reagent tests at 52 locations annually. A normal scan consists of THC (50ng/ml cutoff), Opiate (300 ng/ml cutoff), Buprenorphine (5 ng/ml cutoff), and Synthetic Cannabinoids XLR-11/UR-144 (10ng/ml cutoff). Additionally, work release facilities conduct scans for the use of ethyl alcohol (3,340), which is included in the above number of tests and scans. These reagents will be worth 88% of the total weighted bid price.

There are 27 Other Reagents (totaling 14,850 tests) listed on the bid cost sheet that DOCCS may require testing during the contract period. Please note, DOCCS is not currently testing for all of the substances listed. However, based on possible changes in the drug world, should the need arise, DOCCS asks bidders

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for pricing on other known reagents for future testing ability.” These other reagents will only be worth 2% of the total weighted bid price-

Bidder's bid price shall be inclusive of the following: licenses, insurance, administrative, profit, all labor and equipment costs, reporting or other requirements, all overhead costs, and other ancillary costs. Details of service not explicitly stated in these specifications, but necessarily attendant thereto are deemed to be understood by the Bidder and included herein.

For evaluation purposes, the total cost of training will be worth 10% of the total weighted bid price.

### **METHOD OF AWARD:**

Award shall be made by Grand Total Weighted Bid Price to the **lowest responsive and responsible bidder** as calculated on the Bid Cost Sheet.

**Upon award, Contractor will have until 11/30/18 to install equipment and complete training.**

### **MINOR DEVIATIONS (s)/MINOR TECHNICALITY:**

DOCCS reserves the right to have the flexibility to consider bids with minor deviations or technicalities and to waive minor deviations or technicalities that may be consistent with the intent and scope of the solicitation. The flexibility may permit a reasonable outcome in cases where the results of a fair, competitive process are clear but the award of a contract is threatened due to a minor technicality or a minor deviation.

### **“OR EQUAL”:**

The State reserves the right to determine if a product/service is 'equal' to bid specifications. Bids with minor deviations or technicalities may be waived if consistent with the intent and scope of the solicitation. The flexibility may permit a reasonable outcome in cases where the results of a fair, competitive process are clear but the award of a contract is threatened due to a minor technicality or a minor deviation.

### **CONTRACT PAYMENTS:**

Contractor shall provide complete and accurate billing invoices to the Agency in order to receive payment. Billing invoices submitted to the Agency must contain all information and supporting documentation required by the Contract, the Agency and the State Comptroller. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electric payments. Authorization forms are available at the State Comptroller's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), by email at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us), or by telephone at (518) 474-4032. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

### **BILLING:**

Invoices should be sent to the ordering Correctional Facility, address, attention: Accounts Payable. Payment will be based on an invoice used in the supplier's normal course of business. Invoices must contain the Contract No., description of materials, quantity, unit and price per unit as well as the Federal Identification Number and New York State Vendor ID.

If unable to email invoices, mail them to the Business Services Center address at:

Dept. of Corrections and Community Supervision  
Unit ID: 3250226  
c/o OGS BSC Accounts Payable  
Building 5, 5th floor  
1220 Washington Ave  
Albany, NY 12226-1900

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Invoices should be sent to the Office of General Services' (OGS) Business Services Center (BSC) within ten (10) business days after the first day of the following month.

### **INTEREST:**

Interest on late payment is governed by State Finance Law, Section 179-M.

### **CONTRACT PERIOD:**

The contract awarded as a result of this IFB shall commence on September 1, 2018, or upon approval of the Office of the State Comptroller (OSC), whichever date is later, and will continue for five (5) years from the commencement date.

### **REJECTION:**

The State reserves the right to reject an obviously unbalanced bid or to make "NO AWARD" on individual listings or sub-items if individual bid prices are deemed to be unbalanced or excessive or if an error in the solicitation becomes evident. In such case, ranking and evaluation of bids may be made on remaining items. Award would be made on the remaining items. The determination of an unbalanced bid shall be at the sole discretion of the State. Options contained in this paragraph shall also be at the State's sole discretion.

### **CANCELLATION FOR CAUSE AND CONVENIENCE:**

This agreement may be terminated by mutual agreement upon thirty (30) days written notice. Also, DOCCS – CPU may terminate the agreement immediately for cause, upon written notice, if the contractor fails to comply with the terms and conditions of this agreement and/or with any laws, rules, regulations, policies or procedures of the State of New York affecting this agreement.

The State of New York retains the right to cancel this contract, in whole or in part without reason provided that the Contractor is given at least thirty (30) day notice of its intent to cancel. This provision should not be understood as waiving the State's right to terminate the contract for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision. Any such cancellation shall have no effect on existing Agency agreements, which are subject to the same 30-day discretionary cancellation or cancellation for cause by the respective user Agencies.

### **CONTRACTOR INSURANCE REQUIREMENTS:**

Prior to the commencement of the work to be performed by the Contractor hereunder, the Contractor shall file with The People of the State of New York, DOCCS, Certificates of Insurance (hereinafter referred to as "Certificates"), evidencing compliance with all requirements. Such Certificates shall be of a form and substance acceptable to DOCCS.

Certificate acceptance and/or approval by DOCCS does not and shall not be construed to relieve Contractor of any obligations, responsibilities or liabilities under the Contract.

Contractors shall be required to procure, at their sole cost and expense, and shall maintain in force at all times during the term of any Contract resulting from this Solicitation, policies of insurance as required by this Section. All insurance required by this Section shall be written by companies that have an A.M. Best Company rating of "A-," Class "VII" or better. In addition, companies writing insurance intended to comply with the requirements of this Section should be licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York. DOCCS may, in its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documents are accompanied by a completed Excess Lines Association of New York (ELANY) affidavit or other documents demonstrating the company's strong financial rating. If, during the term of a policy, the carrier's A.M. Best rating falls below "A-," Class "VII," the insurance must be replaced, on or before the renewal date of the policy, with insurance that meets the requirements above.

Bidders and Contractors shall deliver to DOCCS evidence of the insurance required by this Solicitation and any Contract resulting from this Solicitation in a form satisfactory to DOCCS. Policies must be written in accordance with the requirements of the paragraphs below, as applicable. While acceptance of insurance documentation shall not be unreasonably withheld, conditioned or delayed, acceptance and/or approval by DOCCS does not, and shall not be construed to, relieve Bidders or Contractors of any obligations, responsibilities or liabilities under this Solicitation or any Contract resulting from this Solicitation.

## GENERAL INFORMATION

The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the term of the Contract.

A. General Conditions Applicable to Insurance. All policies of insurance required by this Solicitation or any Contract resulting from this Solicitation shall comply with the following requirements:

1. **Coverage Types and Policy Limits.** The types of coverage and policy limits required from Bidders and Contractors are specified in Paragraph B Insurance Requirements below.
2. **Policy Forms.** Except as otherwise specifically provided herein, or agreed to in the Contract resulting from this Solicitation, all policies of insurance required by this Section shall be written on an occurrence basis.

### Certificates of Insurance/Notices

Bidders and Contractors shall provide DOCCS with a Certificate or Certificates of Insurance, in a form satisfactory to DOCCS as detailed below, and pursuant to the timelines set forth in Section B below. Certificates shall reference the Solicitation or award number and shall name The New York State Department of Corrections and Community Supervision, Harriman Campus, Division of Support Operations – Contract Procurement Unit, 550 Broadway, Menands, NY 12204, as the certificate holder.

### Certificates of Insurance shall

- Be in the form acceptable to DOCCS and in accordance with the New York State Insurance Law;
- Disclose any deductible, self-insured retention, aggregate limit or exclusion to the policy that materially changes the coverage required by this Solicitation or any Contract resulting from this Solicitation;
- Refer to this Solicitation and any Contract resulting from this Solicitation by award number;
- Be signed by an authorized representative of the referenced insurance carriers; and
- Contain the following language in the Description of Operations / Locations / Vehicles section: Additional insured protection afforded is on a primary and non-contributory basis. A waiver of subrogation is granted in favor of the additional insureds.

Only original documents (certificates of insurance and any endorsements and other attachments) or electronic versions of the same that can be directly traced back to the insurer, agent or broker via e-mail distribution or similar means will be accepted.

DOCCS generally requires Contractors to submit only certificates of insurance and additional insured endorsements, although DOCCS reserves the right to request other proof of insurance. Contractors should refrain from submitting entire insurance policies, unless specifically requested by DOCCS. If an entire insurance policy is submitted but not requested, DOCCS shall not be obligated to review and shall not be chargeable with knowledge of its contents. In addition, submission of an entire insurance policy not requested by DOCCS does not constitute proof of compliance with the insurance requirements and does not discharge Contractors from submitting the requested insurance documentation.

3. **Primary Coverage.** All liability insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to the People of the State of New York, the New York State Department of Corrections and Community Supervision, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. Any other insurance maintained by the People of the State of New York, the New York State Department of Corrections and Community Supervision, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees shall be excess of all applicable Contractor's insurance, including any umbrella and/or excess policies, and shall not contribute with the Bidder/Contractor's insurance.
4. **Breach for Lack of Proof of Coverage.** The failure to comply with the requirements of this Section at any time during the term of the Contract shall be considered a breach of the terms of the Contract and shall allow the People of the State of New York, the New York State Department of Corrections and Community Supervision, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees to avail themselves of all remedies available under the Contract or at law or in equity.



GENERAL INFORMATION

5. **Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate the applicable deductibles/self-insured retentions for each listed policy. Deductibles or self-insured retentions above **REDACTED** are subject to approval from DOCCS. Such approval shall not be unreasonably withheld, conditioned or delayed. Bidders and Contractors shall be solely responsible for all claim expenses and loss payments within the deductibles or self-insured retentions. If the Bidder/Contractor is providing the required insurance through self-insurance, evidence of the financial capacity to support the self-insurance program along with a description of that program, including, but not limited to, information regarding the use of a third-party administrator shall be provided upon request. If the Contractor is unable to meet their obligation under any deductible, self-insured retention or self-insurance, neither the People of the State of New York nor DOCCS will be obligated to drop down to cover those amounts.
6. **Subcontractors.** Prior to the commencement of any work by a Subcontractor, the Contractor shall require such Subcontractor to procure policies of insurance as required by this Section and maintain the same in force during the term of any work performed by that Subcontractor.
7. **Waiver of Subrogation.** For all liability policies and the workers' compensation insurance required below, the Bidder/Contractor shall cause to be included in its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against The People of the State of New York, the New York State Department of Corrections and Community Supervision, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if the Contractor waives or has waived before the casualty, the right of recovery against The People of the State of New York, the New York State Department of Corrections and Community Supervision, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees or (ii) any other form of permission for the release of The People of the State of New York, the New York State Department of Corrections and Community Supervision, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. A Waiver of Subrogation Endorsement shall be provided upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.
8. **Additional Insured.** The Contractor shall cause to be included in each of the liability policies required below, ISO form CG 20 10 11 85 (or a form or forms that provide equivalent coverage, such as the combination of CG 20 10 04 13 and CG 20 37 04 13) and form CA 20 48 10 13 (or a form or forms that provide equivalent coverage), naming as additional insureds: The People of the State of New York, the New York State Department of Corrections and Community Supervision, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. An Additional Insured Endorsement evidencing such coverage shall be provided to DOCCS pursuant to the timelines set forth in Section B below. A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. For Contractors who are self-insured, the Contractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the Contractor would have been required to pursuant to this Section had the Contractor obtained such insurance policies.
9. **Excess/Umbrella Liability Policies.** Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies; however, a minimum of one million dollars **REDACTED** must be primary coverage for general liability and auto liability. All Contractor's applicable insurance policies, including umbrella and excess insurance, will be primary to any insurance, self-insurance, deductible or self-insured retention of The People of the State of New York, the New York State Department of Corrections and Community Supervision, or any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of underlying insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage and limits of insurance), including proof that the excess/umbrella insurance follows form must be provided upon request.
10. **Notice of Cancellation or Non-Renewal.** Policies shall be written so as to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five (5) business days of receipt of any notice of cancellation or non-renewal of insurance, the Contractor shall provide DOCCS with a copy of any such notice received from an insurer together with proof of replacement coverage that complies with the insurance requirements of this Solicitation and any Contract resulting from this Solicitation.

GENERAL INFORMATION

11. **Policy Renewal/Expiration** Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in this Solicitation and any Contract resulting from this Solicitation shall be delivered to DOCCS. If, at any time during the term of any Contract resulting from this Solicitation, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Solicitation or any Contract resulting from this Solicitation, or proof thereof is not provided to DOCCS, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by DOCCS.
12. **Deadlines for Providing Insurance Documents after Renewal or Upon Request.** As set forth herein, certain insurance documents must be provided to the DOCCS Procurement Services contact identified in the Contract Award Notice after renewal or upon request. This requirement means that the Contractor shall provide the applicable insurance document to DOCCS as soon as possible but in no event later than the following time periods:
- For certificates of insurance: 5 business days
  - For information on self-insurance or self-retention programs: 15 calendar days
  - For other requested documentation evidencing coverage: 15 calendar days
  - For additional insured and waiver of subrogation endorsements: 30 calendar days

Notwithstanding the foregoing, if the Contractor shall have promptly requested the insurance documents from its broker or insurer and shall have thereafter diligently taken all steps necessary to obtain such documents from its insurer and submit them to DOCCS, DOCCS shall extend the time period for a reasonable period under the circumstances, but in no event shall the extension exceed 30 calendar days.

**B. Insurance Requirements**

Bidders and Contractors shall obtain and maintain in full force and effect, throughout the term of any Contract resulting from this Solicitation, at their own expense, the following insurance with limits not less than those described below and as required by the terms of any Contract resulting from this Solicitation, or as required by law, whichever is greater:

Insurance Type		Proof of Coverage is Due
Commercial General Liability	<b>REDACTED</b>	Upon notice from DOCCS of tentative award
General Aggregate		
Products – Completed Operations Aggregate		
Personal and Advertising Injury		
Medical Expenses Limit		
Business Automobile Liability Insurance		
Workers' Compensation		
Disability Benefits		

1. **Commercial General Liability Insurance:** Such liability shall be written on the current edition of ISO occurrence form CG 00 01, or a substitute form providing equivalent coverage and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) [and explosion, collapse & underground coverage].

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate
- Products – Completed Operations Aggregate
- Personal and Advertising Injury
- Each Occurrence



## GENERAL INFORMATION

Coverage shall include, but not be limited to, the following:

- Premises liability;
- Independent contractors;
- Blanket contractual liability, including tort liability of another assumed in a contract;
- Defense and/or indemnification obligations, including obligations assumed under the Contract;
- Cross liability for additional insureds;
- Products/completed operations for a term of no less than three [1-3] years, commencing upon acceptance of the work, as required by the Contract;
- [Explosion, collapse and underground hazards; and
- Contractor means and methods].

2. **Business Automobile Liability Insurance:** Such insurance shall cover liability arising out of any automobile used in connection with performance under the Contract, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates.

In the event that the Contractor does not own, lease or hire any automobiles used in connection with performance under the Contract, the Contractor does not need to obtain Business Automobile Liability Insurance, but must attest to the fact that the Contractor does not own, lease or hire any automobiles used in connection with performance under the Contract on a form provided by DOCCS. If, however, during the term of the Contract, the Contractor acquires, leases or hires any automobiles that will be used in connection with performance under the Contract, the Contractor must obtain Business Automobile Liability Insurance that meets all of the requirements of this section and provide proof of such coverage to DOCCS in accordance with the insurance requirements of any Contract resulting from this Solicitation.

In the event that the Contractor does not own or lease any automobiles used in connection with performance under the Contract, but the Contractor does subcontract, hire and/or utilize non-owned automobiles in connection with performance under the Contract, the Contractor, subcontractor or owner of the automobile(s) must: (i) obtain Business Automobile Liability Insurance as required by this Solicitation or any Contract resulting from this Solicitation, except that such insurance may be limited to liability arising out of hired and/or non-owned automobiles, as applicable; and (ii) attest to the fact that the Contractor does not own or lease any automobiles used in connection with performance under the Contract, on a form provided by DOCCS. If, however, during the term of the Contract, the Contractor acquires or leases any automobiles that will be used in connection with performance under the Contract, the Contractor must obtain Business Automobile Liability Insurance that meets all of the requirements of this Section and provide proof of such coverage to DOCCS in accordance with the insurance requirements of any Contract resulting from this Solicitation.

3. **Workers' Compensation Insurance and Disability Benefits Requirements**

Sections 57 and 220 of the New York State Workers' Compensation Law require the heads of all municipal and state entities to ensure that businesses applying for contracts have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals. **Failure to provide proper proof of such coverage or a legal exemption will result in a rejection of a Bid or any contract renewal. A Bidder will not be awarded a Contract unless proof of workers' compensation and disability insurance is provided to DOCCS.** Proof of workers' compensation and disability benefits coverage, or proof of exemption must be submitted to DOCCS at the time of Bid submission, policy renewal, contract renewal, and upon request. Proof of compliance must be submitted on one of the following forms designated by the New York State Workers' Compensation Board. **An ACORD form is not acceptable proof of New York State workers' compensation or disability benefits insurance coverage.**

Proof of Compliance with Workers' Compensation Coverage Requirements:

- Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the Workers' Compensation Board's website ([www.wcb.ny.gov](http://www.wcb.ny.gov));



## GENERAL INFORMATION

- Form C-105.2 (9/07), *Certificate of Workers' Compensation Insurance*, sent to DOCCS by the Contractor's insurance carrier upon request, or if coverage is provided by the New York State Insurance Fund, they will provide Form U-26.3 to DOCCS upon request from the Contractor; or
- Form SI-12, *Certificate of Workers' Compensation Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office, or
- Form GSI-105.2, *Certificate of Participation in Workers' Compensation Group Self-Insurance*, available from the Contractor's Group Self-Insurance Administrator.

### Proof of Compliance with Disability Benefits Coverage Requirements:

- Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the Workers' Compensation Board's website ([www.wcb.ny.gov](http://www.wcb.ny.gov));
- Form DB-120.1, *Certificate of Disability Benefits Insurance*, sent to DOCCS by the Contractor's insurance carrier upon request; or
- Form DB-155, *Certificate of Disability Benefits Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office.

An instruction manual clarifying the New York State Workers' Compensation Law requirements is available for download at the New York State Workers' Compensation Board's website, <http://www.wcb.ny.gov>. Once on the site, click on the Employers/Businesses tab and then click on Employers' Handbook.

## **INDEMNIFICATION:**

The Contractor shall assume all risks of liability for its performance, or that of any of its officers, employees, subcontractors or agents, of any contract resulting from this solicitation and shall be solely responsible and liable for all liabilities, losses, damages, costs or expenses, including attorney's fees, arising from any claim, action or proceeding relating to or in any way connected with the performance of this Agreement and covenants and agrees to defend, indemnify and hold harmless the State of New York, its agents, officers and employees, from any and all claims, suits, causes of action and losses of whatever kind and nature, arising out of or in connection with its performance of any contract resulting from this solicitation, including negligence, active or passive or improper conduct of the Contractor, its officers, agents, subcontractors or employees, or the failure by the Contractor, its officers, agents, subcontractors or employees to perform any obligations or commitments to the State or third parties arising out of or resulting from any contract resulting from this solicitation. Such indemnity shall not be limited to the insurance coverage herein prescribed.

## **REFERENCES:**

As per the "Vendor Responsibility Disclosure" clause, bidders may be required to provide references of the bidder's largest customers. References shall be commercial or governmental accounts, and should demonstrate the ability of the vendor to perform jobs similar in scope to the size, nature and complexity of the outlined bid. The references shall include the:

- Name, address, contact person, telephone number, fax number, and number of years bidder has serviced the referenced account;
- Volume of business performed within the past three years for each referenced account.

## **FINANCIAL STABILITY:**

As per the "Vendor Responsibility Disclosure" clause, bidder may be required to document its ability to service a contract with dollar sales volume similar to scope of this bid through submission of financial statements documenting past sales history. The bidder must be financially stable and able to substantiate the financial statements of its company. In addition to sales history, current financial statements may be requested and must be provided within five business days. The state reserves the right to request additional documentation from the bidder and to request reports on financial stability from independent financial rating services. The state reserves the right to reject any bidder who does not demonstrate financial stability sufficient for the scope of this bid.

## GENERAL INFORMATION

### **GENERAL REQUIREMENTS:**

The Bidder agrees to

1. Adhere to all State and Federal laws and regulations in connection with the contract; and,
2. Notify DOCCS of any changes in the legal status or principal ownership of the firm, forty-five (45) days in advance of said change.

The Bidder agrees that

3. In any contract resulting from this IFB, it shall be completely responsible for its work, including any damages or breakdowns caused by its failure to take appropriate action; and,
4. Any contract resulting from this IFB may not be assigned, transferred, conveyed or the work subcontracted without the prior written consent of the Commissioner of DOCCS.
5. For reasons of safety and public policy, in any contract resulting from this IFB, the use of illegal drugs and/or alcoholic beverages by the Contractor or its personnel shall not be permitted while performing any phase of the work herein specified.
6. For purposes of any contract resulting from this IFB, the State will not be liable for any expense incurred by the Contractor for any parking fees or as a consequence of any traffic infraction or parking violations attributable to employees of the Contractor.
7. The Commissioner's interpretation of specifications shall be final and binding upon the Contractor.
8. The Commissioner of DOCCS will make no allowance or concession to the Bidder for any alleged misunderstanding because of quantity, quality, character, location or other conditions.
9. Should it appear that there is a real or apparent discrepancy between different sections of specifications concerning the nature, quality or extent of work to be furnished, it shall be assumed that the Bidder has based its bid on the more expensive option. Final decision will rest with the Commissioner of DOCCS.
10. Inspection – For purposes of any contract resulting from this IFB, the quality of service is subject to inspection and may be made at any reasonable time by the State of New York. Should it be found that quality of services being performed is not satisfactory and that the requirements of the specifications are not being met, the Commissioner DOCCS may terminate the contract and employ another contractor to fulfill the requirements of the contract. The existing Contractor shall be liable to the State of New York for costs incurred on account thereof.
11. Stop Work Order - The Commissioner of DOCCS reserves the right to stop the work covered by this IFB and any contract(s) resulting therefrom at any time that it is deemed the successful Bidder is unable or incapable of performing the work to the state's satisfaction. In the event of such stopping, DOCCS shall have the right to arrange for the completion of the work in such manner as it may deem advisable and if the cost thereof exceeds the amount of the bid, the successful Bidder shall be liable to the State of New York for any such costs on account thereof. In the event that DOCCS issues a stop work order for the work as provided herein, the Contractor shall have ten (10) working days to respond thereto before any such stop work order shall become effective.

### **CONTRACT TERMS:**

1. All provisions and requirements of Appendix A Standard Clauses for New York State Contracts, which is attached hereto and forms a part hereof, will be incorporated into any contract resulting from this IFB, and will be binding upon the parties to such contract.
2. All provisions and requirements that are attached hereto and form a part hereof, will be incorporated into any contract resulting from this IFB, and will be binding upon the parties to such contract.
3. It is stipulated and agreed by the parties that the law of the State of New York shall solely and in all respects, govern with relation to any dispute, litigation, or interpretation arising out of or connected with any contract resulting from this IFB.
4. Any contract resulting from this IFB shall not be deemed executed, valid or binding unless and until approved in writing by the Attorney General and the Comptroller of the State of New York.

## GENERAL INFORMATION

### **PROCUREMENT RIGHTS:**

The State of New York reserves the rights for the following:

1. Reject any and all bids received in response to this Solicitation.
2. Disqualify a Bidder from receiving the award if the Bidder, or anyone in the Bidder's employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.
3. Correct Bidders' mathematical errors and waive or modify other minor irregularities in bids received, after prior notification to the Bidder.
4. Adjust any Bidder's expected costs of the bid price based on a determination of the evaluation committee that the selection of the said Bidder will cause the State to incur additional costs.
5. Negotiate with Bidders responding to this Solicitation within the Solicitation requirements to serve the best interests of the State.
6. Begin contract negotiations with another bidding Contractor(s) to serve the best interests of the State should DOCCS be unsuccessful negotiating a contract with the selected Contractor within 21 days of selection notification.
7. Waive any mandatory, non-material requirement not met by all Bidders.
8. Not make an award from this Solicitation or withdraw any tentative awards made as a result of this Solicitation.
9. Make an award under this Solicitation in whole or in part.
10. Make multiple contract awards pursuant to the Solicitation.
11. Have any service completed via separate competitive bid or other means, as determined to be in the best interest of the State.
12. Seek clarifications of bids.
13. Disqualify any bidder whose conduct and/or bid fails to conform to the requirements of the IFB.
14. Prior to the bid opening, amend the IFB specifications to correct errors or oversights, or to supply additional information, as it becomes available.
15. Change any of the scheduled dates stated herein with written notice to all bidders who have received this IFB.
16. If two or more offers are found to be substantially equivalent, the Commissioner of DOCCS, at his sole discretion, will determine award.

**Please Note:** The State is not liable for any costs incurred by Bidders in the preparation and production of bids or for any work performed prior to the issuance of a contract.

NYS DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION  
IFB 2018- 06 URINALYSIS ANALYZERS  
SEPTEMBER 1, 2018 – AUGUST 31, 2023

## SCOPE OF SERVICES

### OVERVIEW:

DOCCS is seeking to award a contract for bench top urinalysis analyzers on a reagent rental basis that includes machines, consumables (excluding distilled/sterile water), calibrators, controls, maintenance, testimony, training, and help desk assistance.

DOCCS conducts approximately 340,000 scans (84,165 x 4 + 3,340) for illicit substances using 5 reagent tests at 52 locations annually. A normal scan consists of THC (50ng/ml cutoff), Opiate (300 ng/ml cutoff), Buprenorphine (5 ng/ml cutoff), and Synthetic Cannabinoids XLR-11/UR-144 (10ng/ml cutoff). Additionally, work release facilities conduct scans for the use of ethyl alcohol (3,340), which is included in the above number of tests and scans. For evaluation purposes, the total cost of these tests will represent 88% of the weighted bid price.

There are 27 Other Reagents (totaling 14,850 tests) listed on the bid cost sheet that DOCCS may require testing during the contract period. Please note, DOCCS is not currently testing for all of the substances listed. However, based on possible changes in the drug world, should the need arise, DOCCS asks bidders for pricing on other known reagents for future testing ability." For evaluation purposes, the total cost of these tests will represent 2% of the weighted price.

For evaluation purposes, the total cost of training will be worth 10% of the total weighted bid price.

**DESCRIPTION OF SYSTEM FUNCTIONALITY:** Documentation should be provided that is descriptive of the functions supported by the system. Existing product literature and prepared marketing materials may be included; however, this information is less useful than a more detailed user and technical document. Please include information on the following:

### PRODUCT SPECIFICATIONS:

#### Hardware:

1. Analyzers must be new and not refurbished.
2. Must provide 1 analyzer machine to each correctional facility (see Attachment A - Correctional Facilities Map & Locations, excluding the following correctional facilities: Taconic and Moriah).
3. Must print a daily sheet of all individuals tested with results, as well as the ability to print individual results.
4. Machine must be able to operate independent of internet connection, the ability to connect should be present for possible future use.
5. Installation shall be conducted by the company at a date and time requested by DOCCS (at least 1 week notice).
6. Provide timeframe for installation of equipment (as mutually agreed upon schedule between DOCCS and Awardee).
7. Provide delivery time after the order of equipment and reagents/consumables.

#### Consumables:

Contractor will provide all consumables relating to urinalysis testing conducted with the exception of distilled water. Consumables must be received by the ordering Correctional Facility within 5 business days of an official request. Please note: there will be no shipping costs associated for orders of consumables and are to be shipped F.O.B. destination. In addition, the Contractor will be required to develop a method for correctional facilities to order consumables to be approved by DOCCS. Contractor must designate someone in their organization to be DOCCS' official contact for consumables.

#### Training:

1. Initial onsite training for a maximum of 5 staff members shall be conducted by the awarded Contractor at each of DOCCS 52 facilities. The training will be worth 10% of the total weighted score.

2. In addition, a mandatory Master trainer class will be conducted by the Contractor to allow DOCCS to train and certify new testers. Certificates will be provided by the Contractor. On-site master trainer classes will be conducted at the request of DOCCS but not more than one (1) time annually. This will occur in each of 9 DOCCS regions (HUBs) at a DOCCS location and will include no more than 36 individuals in total (approximately 4 per HUB). The training will encompass new drug trends, testifying for administrative hearings, common issues with the machine, proper procedures for training new testers, common issues with training new testers, minor preventative maintenance.

The training should also include peripherals and training materials for both the master trainer and new tester (PowerPoint/manual, tests, training aids, etc.) A method for the supply and updating of the curriculum as needed by the manufacturer should be available.

A minimum should be set by the manufacturer to determine tester proficiency. All training must occur on site as the restrictions to internet access is limited for many DOCCS employees. A state map of DOCCS facilities and HUBs is attached. The training may be conducted at any facility within a specific HUB based on availability of urinalysis room space and need.

For evaluation purposes, the total cost of training (total for items 1. and 2a-b.) will be worth 10% of the total weighted bid price. Please note: Vendor will only be paid for actual training events provided. DOCCS reserves the right to increase or decrease training sessions based on actual staff training needs; additional training classes will be paid based on the vendor's bid rate for the location where the additional training will be held.

**Please note: Training cost shall be invoiced separately from testing costs.**

#### **Support and Maintenance:**

1. Operators manual must be provided at a minimum of English and Spanish. Additional, manuals in other languages must be available upon request free of charge.
2. The Department requires a maintenance agreement for the life of agreement during business hours for service to the Urinalysis Analyzer as requested. This maintenance agreement will become effective upon expiration of the initial warranty. **Business Hours: 8:00 am – 5:00 pm, Monday – Friday (no weekends or state holidays)** The following are New York State designated holidays:

New Year's Day	Labor Day
Martin Luther King, Jr. Day	Columbus Day
Lincoln's Birthday	Election Day
Washington's Birthday	Veteran's Day
Memorial Day	Thanksgiving
Independence Day	Christmas

3. Must provide unlimited 24/7 telephone support (for technical support and troubleshooting)
4. Must provide preventive maintenance visits (at least 2 visits annually)
5. Must provide 24-hour response time (when on-site service is required/requested)
6. Must provide and cover, all parts, labor (including travel), and costs associated with repair and maintenance of the machine.
7. If replacement equipment is required due to failure, it must be received within 48 hours.
8. If replacement software is required due to failure, it must be received within 24 hours.
9. Helpdesk Operations
10. User feedback procedures
11. 24/7 and 365 support procedures
12. Warranty, returns and exchanges

**TESTIMONY:**

Testimony at DOCCS administrative hearings is required by the Contractor during normal business hours, telephonic testimony will be required on an as needed. Testimony may be, but is not limited to, machine operation, calibration, maintenance, procedures, and cross-reactivity. In the event of litigation, DOCCS may require the manufacturer provide an expert in the field of urinalysis drug testing to assist the New York State Attorney General's Office or DOCCS Counsel's Office in defending issues that may arise from the urinalysis testing of inmates.

**NYS DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION  
IFB 2018-06 URINALYSIS ANALYZERS  
BID COST SHEET**

DOCCS is seeking to award a contract for bench top urinalysis analyzers on a reagent rental basis that includes machines, consumables (excluding distilled/sterile water), calibrators, controls, maintenance, testimony, training, and help desk assistance. An award will be made to the responsive, responsible bidder offering the lowest grand total weighted bid price for testing requested in this IFB.

Reagents	Estimated Annual Test Quantity (A)	Price per test (B)	Kit size	Kit Yield	Price per Kit	Total Cost (A x B)
Buprenorphine	84,165 tests					
Cannabinoids (THC)	84,165 tests					
Opiates	84,165 tests					
Synthetic Cannabinoids-2	84,165 tests					
Ethyl Ethanol	3,340 tests					
Total	340,000 tests	Total Cost of Above				(C)
*Other Reagents	*Estimated Annual Test Quantity (A)	Price per test (B)	Kit size	Kit Yield	Price per Kit	Total Cost (A x B)
6-AM	550 tests					
Amphetamine	550 tests					
Barbiturates	550 tests					
Benzodiazepines	550 tests					
Benzoylcegonine (cocaine metabolite)	550 tests					
Creatinine	550 tests					
Ecstasy	550 tests					
EDDP	550 tests					
Etg	550 tests					
K2 (Synthetic Cannabinoids-1)	550 tests					
K2 (Synthetic Cannabinoids-2)	550 tests					
K2 (Synthetic Cannabinoids-3)	550 tests					
Ketamine	550 tests					
Meperidine	550 tests					
Methadone	550 tests					



*Other Reagents	*Estimated Annual Test Quantity (A)	Price per test (B)	Kit size	Kit Yield	Price per Kit	Total Cost (A x B)
Methamphetamine	550 tests					
Methaqualone	550 tests					
Nitrite	550 tests					
Opiates 2k	550 tests					
Oxidants	550 tests					
Oxycodone	550 tests					
pH	550 tests					
Phencyclidine (PCP)	550 tests					
Propoxyphene	550 tests					
Specific gravity	550 tests					
Tramadol	550 tests					
Tricyclic antidepressants	550 tests					
Total	14,850 tests	Total Cost of Above				(D)

\*Test quantities are for evaluation purposes only in determining the lowest weighted bid price. The test quantities can increase or decrease during the contract period.

For evaluation purposes, a weighted bid price of eighty-eight percent (88%) of the cost for the 5 reagents listed above will be used, and a weighted bid price of 2% of the overall cost will be attributed to the other listed reagents. \* The price requested for Other Reagents are for the purpose of establishing the price per test should the need to test arise during the contract period.

Bidders must submit pricing per test for the reagents listed to be considered for award. Any alteration to the Bid Cost Sheet may result in the disqualification of bid.

### **Training**

1. Initial on-site training for a maximum of 5 DOCCS staff members per facility shall be conducted by the awarded Contractor at each of DOCCS 52 facilities (Attachment A)

Total cost: \_\_\_\_\_ (1.)

## 2. On-site master training – HUB Training:

HUBs	Locations	Employees Trained	Annual Training Event	Bid Price per training section
Clinton	Clinton CF	4	1	
Elmira	Five Points CF	4	1	
Great Meadow	Great Meadow CF	4	1	
Green Haven	Fishkill CF	4	1	
Sullivan	Eastern CF	4	1	
Oneida	Mid-State CF	4	1	
New York City	Queensboro CF	4	1	
Watertown	Watertown CF	4	1	
Wende	Wende CF	4	1	

a) Total Annual Cost Per Year (9 Sessions) = \$ \_\_\_\_\_

b) Option: Additional Training Events (2 / Year x Average of 9 events in a) above) \$ \_\_\_\_\_

Total cost (a)+(b): \_\_\_\_\_(2.)

For evaluation purposes, DOCCS will use the average of 9 events for additional training classes per year. DOCCS reserves the right to increase or decrease training sessions based on actual staff training needs; vendor will be paid for the vendor's bid rate for the location where the additional training will be held.

For evaluation purposes, the total cost of training (total for items 1. and 2a-b.) will be worth 10% of the total weighted bid price.

Reagents Total Weighted Cost: (C) \_\_\_\_\_ x 88% = \_\_\_\_\_

Other Reagents Total Weighted Cost: (D) \_\_\_\_\_ x 2% = \_\_\_\_\_

Training Total Weighted Cost: (1+2) \_\_\_\_\_ x 10% = \_\_\_\_\_

**Grand Total: = \$ \_\_\_\_\_**

SIGNATURE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

**RETURN THIS PAGE AS PART OF THE BID**

<p><b>PLEASE USE BLACK INK OR TYPEWRITER WHEN PREPARING YOUR BID. BE SURE YOU HAVE INSERTED YOUR COMPANY'S NAME IN THE BOX</b></p> <p>⇒ ⇒ ⇒ ⇒ ⇒ ⇒</p>	<p><b>Bidder</b></p>
<p><b>NOTES TO BIDDERS:</b> FAILURE TO ANSWER THE QUESTIONS WILL DELAY THE EVALUATION OF YOUR BID AND MAY RESULT IN REJECTION OF YOUR BID.</p> <ul style="list-style-type: none"> <li>Are prices quoted the same as or lower than those quoted other corporations, institutions and government agencies (including GSA/VA contracts) on similar products, quantities, terms, and conditions? See "Best Pricing Offer" in Appendix B, General Specifications. If "NO", please explain on a separate sheet.</li> <li>Person or persons to contact for expediting New York State contract orders:</li> </ul>	<p>_____YES _____NO</p> <p>_____ _____ _____ _____ _____ _____ _____</p>
<ul style="list-style-type: none"> <li>Person or persons to contact in the event of an emergency occurring after business hours or on weekend/holidays:</li> </ul> <p>State Normal Business Hours (Specify M-F, Sat, Sun):</p> <p>_____ _____ _____ _____ _____ _____ _____ _____ _____ _____</p>	<p>_____ _____ _____ _____ _____ _____ _____ _____ _____ _____</p>

**RETURN THIS PAGE AS PART OF THE BID**

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⇒ ⇒ ⇒ ⇒ ⇒ ⇒

Bidder

BIDDERS PLEASE ANSWER THE FOLLOWING QUESTIONS:

1. Are you a New York State resident business?
2. Total number of people employed by your business:
3. Total number of people employed by your business in New York State:
4. Is your business independently owned and operated?

5. **BIDDER'S PRINCIPAL PLACE OF BUSINESS\*:**

\*"Principal Place of Business" is the location of the primary control, direction and management of the enterprise.

\_\_\_\_\_ YES \_\_\_\_\_ NO

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ YES \_\_\_\_\_ NO

State of \_\_\_\_\_

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**PLEASE USE BLACK INK OR TYPEWRITER WHEN PREPARING YOUR BID. BE SURE YOU HAVE INSERTED YOUR COMPANY'S NAME IN THE BOX**

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**Bidder**

#### **6. ENCOURAGING USE OF NEW YORK STATE BUSINESSES IN CONTRACT PERFORMANCE**

New York State businesses have a substantial presence in State Contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, Bidders/Proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the Contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Bidders/Proposers need to be aware that all authorized users of this Contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, Bidders/Proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State Contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the Contractor and its New York State business partners. New York State businesses will promote the Contractor's optimal performance under the Contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its Contractors. The State therefore expects Bidders/Proposers to provide maximum assistance to New York businesses in their use of the Contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

Bidders/Proposers can demonstrate their commitment to the use of New York State businesses by responding to the question below:

Will New York State Businesses be used in the performance of this Contract?

\_\_\_\_\_ YES \_\_\_\_\_ NO

If yes, identify New York State Business(es) that will be used:  
(Attach identifying information)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**RETURN THIS PAGE AS PART OF THE BID**

## Required Information and Forms

- Appendix A – Standard Clauses for New York State Contracts
- Appendix B – General Specifications (dated August 2012)
- Appendix C – Contractor Requirements for EEO and M/WBE

All bidders **must submit the following required forms with bid**. Forms are provided in this attachment unless otherwise noted:

- Bid Cost Sheet (pages 28-30)
- Non-Disclosure Form (Attachment B)
- Vendor Assurance of No Conflict of Interest or Detrimental Effect (Attachment C)
- Vendor Responsibility Questionnaire (if not completed online, see Page 13 for information and web links to complete)
- Tax and Finance Form ST-220-CA (Form ST-220-TD is filed directly with NYS Department of Tax & Finance)
- Use of Service-Disabled Veteran-Owned Business Enterprises in Contract Performance
- M/WBE and EEO Policy Statement (located in Appendix C)
- EEO Staffing Plan (Form EEO 100)

The following documentation will be required **only upon notice of tentative award**:

- Compliance with Workers' Compensation and NYS Disability Benefits Insurance Requirements (see Page 21):
  - Proof of Compliance with Workers' Compensation Coverage
  - Proof of Compliance with Disability Benefits Coverage
- Contractor Insurance Requirements (see Pages 17-22)

## **Appendix A**



## **Appendix B**

## **Appendix C**

### **CONTRACTOR REQUIREMENTS FOR EEO AND MWBE**

## **CONTRACTOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT AND PARTICIPATION OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND NEW YORK STATE CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE**

### **I. General Provisions**

- A. The Department of Corrections and Community Supervision (hereinafter referred to as "DOCCS") is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of REDACTED for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of REDACTED for real property renovations and construction.
- B. The contractor to the subject contract (the "Contractor" and the "Contract," respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State DOCCS (the "DOCCS"), to fully comply and cooperate with the DOCCS in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). The Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

### **II. Contract Goals**

- A. For purposes of this procurement, the DOCCS hereby establishes an overall goal of 0% for Minority and Women-Owned Business Enterprises ("MWBE") participation, 0% for New York State certified minority-owned business enterprises ("MBE") participation and 0% for New York State certified women-owned business enterprises ("WBE") participation (collectively, "MWBE Contract Goals") based on the current availability of qualified MBEs and WBEs.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section II-A hereof, the Contractor should reference the directory of New York State Certified MBWEs found at the following internet address: <https://ny.newnycontracts.com>.

Additionally, the Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. Where MWBE Contract Goals have been established herein, pursuant to 5 NYCRR §142.8, the Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the DOCCS for liquidated or other appropriate damages, as set forth herein.

### **III. Equal Employment Opportunity (EEO)**

- A. The Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

B. The Contractor shall comply with the following provisions of Article 15-A:

1. Contractor and subcontractor performing work on the Contract ("Subcontractor") shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
2. The Contractor shall submit an EEO policy statement to the DOCCS within seventy- two (72) hours after the date of the notice by DOCCS to award the Contract to the Contractor.
3. If the Contractor or Subcontractor does not have an existing EEO policy statement, the DOCCS may provide the Contractor or Subcontractor a model statement (see Form – Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).
4. The Contractor's EEO policy statement shall include the following language:
  - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
  - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
  - c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
  - d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each Subcontractor as to work in connection with the Contract.

C. Form 101 - Staffing Plan

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The Contractor shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

D. Form 103 - Workforce Employment Utilization Report ("Workforce Report")

1. Once a contract has been awarded and during the term of Contract, the Contractor is responsible for updating and providing notice to the DOCCS of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
2. Separate forms shall be completed by Contractor and any Subcontractor.
3. In limited instances, the Contractor may not be able to separate out the workforce utilized in the performance of the Contract from the Contractor's and/or Subcontractor's total workforce. When a separation can be made, the Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from the Contractor's and/or Subcontractor's total workforce, the Contractor shall submit the Workforce Report and indicate that the information provided is the Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

- E. The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and Subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

#### **IV. MWBE Utilization Plan**

- A. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan, by submitting evidence thereof through the New York State Contract System ("NYSCS"), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that the Contractor may arrange to provide such evidence via a non-electronic method to DOCCS, either prior to, or at the time of, the execution of the contract.
- B. The Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.
- C. The Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, DOCCS shall be entitled to any remedy provided herein, including but not limited to, a finding of the Contractor non-responsiveness.

#### **V. Waivers**

- A. For Waiver Requests, the Contractor should use the NYSCS, provided, however, that Bidder may arrange to provide such evidence via a non-electronic method to DOCCS.
- B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the DOCCS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If the DOCCS, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals and no waiver has been issued in regards to such non-compliance, the DOCCS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

#### **VI. Quarterly MWBE Contractor Compliance Report**

The Contractor is required to submit a Quarterly MWBE Contractor Compliance Report through the NYSCS, provided, however, that Bidder may arrange to provide such evidence via a non-electronic method to the DOCCS by the 10<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

#### **VII. Liquidated Damages - MWBE Participation**

- A. Where DOCCS determines that the Contractor is not in compliance with the requirements of the Contract and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to the DOCCS liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
  1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
  2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the DOCCS, the Contractor shall pay such liquidated damages to the DOCCS within sixty (60) days after they are assessed by the DOCCS unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the DOCCS.





# **APPENDIX D**

## **Bid Cost Sheet**

**(Bid Cost Sheet is part of Appendix H  
and is not included here)**

## **APPENDIX E**

### **Vendor Assurance of Non-Conflict or Detrimental Effect**

**ATTACHMENT C**

**VENDORS ASSURANCE OF NO CONFLICT OF  
INTEREST OR DETRIMENTAL EFFECT**

**Vendor Assurance of No Conflict of Interest or Detrimental Effect**

The Firm offering to provide services pursuant to IFB 2018-06 Urinalysis Analyzers (IFB), as a contractor, joint venture contractor, subcontractor, or consultant, attests that its performance of the services outlined in this Contract does not and will not create a conflict of interest with nor position the Firm to breach any other contract currently in force with the State of New York.

Furthermore, the Firm attests that it will not act in any manner that is detrimental to any State project on which the Firm is rendering services. Specifically, the Firm attests that:

1. The fulfillment of obligations by the Firm, as proposed in the response, does not violate any existing contracts or agreements between the Firm and the State;
2. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not create any conflict of interest, or perception thereof, with any current role or responsibility that the Firm has with regard to any existing contracts or agreements between the Firm and the State;
3. The fulfillment of the obligations by the Firm, as proposed in the response, does not and will not compromise the Firm's ability to carry out its obligations under any existing contracts between the Firm and the State;
4. The fulfillment of any other contractual obligations that the Firm has with the State will not affect or influence its ability to perform under any contract with the State resulting from this Contract;
5. During the negotiation and execution of any contract resulting from this Contract, the Firm will not knowingly take any action or make any decision which creates a potential for conflict of interest or might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
6. In fulfilling obligations under each of its State contracts, including any contract which results from this Contract, the Firm will act in accordance with the terms of each of its State contracts and will not knowingly take any action or make any decision which might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
7. No former officer or employee of the State who is now employed by the Firm, nor any former officer or employee of the Firm who is now employed by the State, has played a role with regard to the administration of this contract procurement in a manner that may violate section 73(8)(a) of the State Ethics Law; and
8. The Firm has not and shall not offer to any employee, member or director of the State any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director.

Firms responding to this Contract should note that the State recognizes that conflicts may occur in the future because a Firm may have existing or new relationships. The State will review the nature of any such new relationships and reserves the right to terminate the contract for cause if, in its judgment, a real or potential conflict of interest cannot be cured.

Name, Title: Carol Bowers Sr Director Finance  
Signature: Carol Bowers  
Date: 5/17/18

This form must be signed by an authorized executive or legal representative.



# **APPENDIX F**

## **Non-Disclosure Agreement**



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## Disclosure of New York State Department of Corrections and Community Supervision Information

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**THIS NON-DISCLOSURE AGREEMENT** is entered into as of \_\_\_\_\_, 20\_\_ by the New York State Department of Corrections and Community Supervision (“DOCCS”) which is the party disclosing confidential information, and **Microgenics Corporation**, which is the party receiving confidential information (“Recipient”), in order to protect the confidential information which is disclosed to the Recipient by DOCCS.

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. The Recipient’s representatives for receiving confidential information are: \_\_\_\_\_ . Recipient shall not disclose the confidential information to any of its employees other than those who have a need to review it and which employees are legally obligated to honor the confidentiality provisions herein.

2. The confidential information disclosed by DOCCS under this Agreement is described as:

N/A

3. The Recipient shall keep the information confidential and shall use the confidential information only for **Urinalysis Analyzers Contract #CC161458**. The Recipient shall not make any copies of the confidential information except as necessary for its employees who are entitled to view it under Section 1 above. Any copies made shall be identified as belonging to DOCCS and marked “confidential” or with a similar legend.

4. The Recipient shall, where applicable, protect the confidential information in a manner consistent with the Health Insurance Portability and Accountability Act (“HIPAA”) of 1996 Privacy and Security provisions and all other applicable regulations.

5. The Recipient shall comply with all Federal and State regulations intended to protect criminal history records as they apply to the confidential information.

6. The Recipient shall comply with all DOCCS directives, policies, practices and procedures as they apply to the protection of the confidential information.

7. The Recipient shall, in the event, of unauthorized disclosure of the confidential information, immediately notify DOCCS, in writing, and fully comply with the requirements of the New York State Breach Notification Act.

8. Any unauthorized disclosure of procurement information may subject Recipient to criminal, civil, and/or administrative penalties.

9. To the extent permitted by law, the Recipient shall protect the disclosed confidential information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination or publication of the confidential information as the Recipient uses to protect its own confidential information of a like nature.

10. The Recipient shall have a duty to protect all confidential information which is disclosed to it, whether disclosed in writing, orally or in any other manner and which is identified as confidential at the time of disclosure. If the disclosure is in writing, it shall be marked “**confidential**.” If a disclosure is not in writing, DOCCS shall provide Recipient with a written memorandum summarizing and designating such information as confidential within thirty (30) days of the disclosure.

11. This agreement controls information that is disclosed to Recipient between **September 1, 2018 through August 31, 2023.**

12. The Recipient’s duties under paragraph 3,4,5,6 & 7 of this Agreement shall expire (1) year after the information is received. The recipient shall return or destroy all DOCCS confidential information. All paper documents and any copies, made in accordance with #3 above, are to be shredded. Electronically stored information is to be destroyed by shredding or securely wiping the media.

13. This Agreement imposes no obligation upon the Recipient with respect to confidential information which (a) was in the Recipient’s possession before receipt by DOCCS; (b) is or becomes a matter of public knowledge through no fault of the Recipient; (c) is received by the Recipient from a third party without a duty of confidentiality; (d) is disclosed by DOCCS to a third party without a duty of confidentiality on the third party; (e) is independently disclosed by the Recipient with DOCCS’ prior written approval; (f) is developed by the Recipient without reference to information disclosed hereunder.

14. DOCCS warrants that it has the right to make the disclosure under this Agreement.

15. Neither party acquires any intellectual property under this Agreement.

16. Neither party has an obligation under this Agreement to purchase, sell or license any service or item from the other party.

17. The Recipient shall adhere to U.S. Export Administration laws and Regulations and shall not export or re-export technical data, information or products received from DOCCS or the direct product of such technical data or information to any proscribed country listed in the U.S. Export Administration Regulations, unless properly authorized by the U.S. Government.

18. The parties do not intend that any agency or partnership be created between them by this Agreement.

19. All additions or modifications to this Agreement must be in writing and signed by both parties.

20. This Agreement is made under and shall be governed by the laws of the State of New York.

21. Neither party may assign its rights or obligations under this Agreement without the written consent of the other party. Any assignment made without said consent shall be null and void.

22. The recipient shall indemnify and hold harmless DOCCS and the State of New York from any and all suits, causes of actions, claims, grievances, damages, judgments, and costs of every name and description under this Agreement, unless such injuries or damages are directly attributable to the intentional acts or negligent conduct of DOCCS, the State of New York, or their employees.

23. The failure of DOCCS to insist upon strict adherence to any provision or other requirement of this Agreement shall not be considered a waiver to deprive DOCCS of the right to insist upon strict adherence of the terms of this Agreement in the future.

24. If any provision, or portion thereof, of this Agreement is, or becomes, invalid under any applicable statute or rule of law, it is to be deemed stricken and the rest of this Agreement shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first above written.

NYS Department of Corrections and  
Community Supervision

Microgenics Corporation

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: Melissa McLaughlin

Print Name: \_\_\_\_\_

Title: Director, Budget and Finance

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



## **APPENDIX G**

### **M/WBE and EEO Policy Statement**

**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL  
EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

**M/WBE AND EEO POLICY STATEMENT**

I, Renee Byrd, the (awardee/contractor) Thermo Fisher Scientific agree to adopt the following policies with respect to the project being developed or services rendered at \_\_\_\_\_

**M/WBE**

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. The Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that, if legally permissible, bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

**EEO**

- (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.
- (b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.
- (c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
- (d) The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- (e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract

Agreed to this 16 day of May, 2018

By Renee Byrd

Print: Renee Byrd

Title: HR EEO Compliance Professional



Renee Byrd is designated as the Minority Business Enterprise Liaison  
(Name of Designated Liaison)

responsible for administering the Minority and Women-Owned Business Enterprises- Equal Employment Opportunity (M/WBE-EEO) program.

**M/WBE Contract Goals**

\_\_\_\_\_ percent Minority and Women's Business Enterprise Participation

\_\_\_\_\_ percent Minority Business Enterprise Participation

\_\_\_\_\_ percent Women's Business Enterprise Participation

Renee Byrd (Renee Byrd)  
(Authorized Representative)

Title: HR EEO Compliance Professional

Date: May 16, 2018

# NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

## EEO STAFFING PLAN (EQUAL EMPLOYMENT OPPORTUNITY)

### SUBMIT WITH BID OR PROPOSAL

Solicitation No.: <b>IFB 2018-06</b>		Reporting Entity: <input checked="" type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor
Contractor/Subcontractor's Name: <b>Microgenics Corporation</b> Thermo Fisher Scientific		
Contractor/Subcontractor's Address:  <b>Telephone NO.: (510) 979-5000 - Ext. 3425</b>		
FEIN: <b>68-0418167</b>		

Report includes Contractor's:  
☐ Contractor's workforce to be utilized on this contract  
☒ Contractor's total workforce  
☐ Subcontractor's workforce to be utilized on this contract  
☐ Subcontractor's total workforce

Submit completed form to:  
 Department of Corrections and Community Supervision  
 Support Operations / Contract Procurement Unit  
 The Harriman State Campus  
 1220 Washington Ave  
 Albany, NY 12226

Enter the total number of employees for each classification.

EEO Job Category	Total Workforce	Workforce by Gender		Workforce by Race/Ethnic Identification								Disabled		Veteran	
		Total Male (M)	Total Female (F)	White (Not Hispanic/Latino) (M)	White (Not Hispanic/Latino) (F)	Black (Not Hispanic/Latino) (M)	Black (Not Hispanic/Latino) (F)	Hispanic or Latino (M)	Hispanic or Latino (F)	Asian (Not Hispanic/Latino) (M)	Asian (Not Hispanic/Latino) (F)	American Indian or Alaskan Native (Not Hispanic/Latino) (M)	American Indian or Alaskan Native (Not Hispanic/Latino) (F)	(M)	(F)
		(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Executive/Senior Level Officials & Managers	1	0	1	0	1	0	0	0	0	0	0	0	0	0	0
First/Mid Level Officials & Managers	132	75	57	33	25	5	3	7	3	30	26	0	0	0	1
Professionals	368	170	198	58	50	8	10	8	10	96	127	0	1	0	0
Technicians	17	12	5	1	0	1	0	1	2	9	3	0	0	0	0
Sales Workers	39	24	15	20	12	2	2	0	0	2	3	0	0	0	0
Administrative Support Workers	48	16	32	2	9	3	6	4	5	7	12	0	0	0	0
Craft Workers	2	2	0	0	0	0	0	1	0	1	0	0	0	0	0
Operatives	95	52	43	5	1	3	2	10	7	34	33	0	0	0	0
Laborers and Helpers	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

PHOTOCOPY LOCALLY AS NEEDED



Service Workers	1	0	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0
Totals	703	351	352	119	99	22	23	31	27	179	202	0	1	1	0	0	1

PREPARED BY (Signature): *Renee Byrd*

NAME AND TITLE OF PREPARER (Print or Type): Renee Byrd, HR EEO Compliance Professional

TELEPHONE NO.: (856) 473-2507

E-MAIL ADDRESS: renee.byrd@thermofisher.com

DATE: 5/16/2018

FOR AGENCY USE ONLY

REVIEWED BY: \_\_\_\_\_ DATE: \_\_\_\_\_

**General instructions:** All Offerors must complete an EEO Staffing Plan (EEO-100) and submit it as part of the bid or proposal package to the address provided. Where the workforce to be utilized in the performance of the State contract can be separated out from the Contractor's total workforce, the Offeror shall complete this form only for the anticipated workforce to be utilized on the State contract. Where the workforce to be utilized in the performance of the State contract cannot be separated out from the Contractor's total workforce, the Offeror shall complete this form for the Contractor's current total workforce. Subcontractors awarded a subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "work") except where the "work" is for the beneficial use of the Contractor must complete this form upon request of DOCCS.

**Instructions for completing:**

1. Enter the Solicitation Number that this report applies to along with the name and address of the Offeror.
2. Check off the appropriate box to indicate if the Offeror completing the report is the Contractor or a Subcontractor.
3. Check off the appropriate box to indicate type of workforce being reported.
4. Enter the total workforce by EEO job category.
5. Break down the total workforce by gender and enter under the heading "Workforce by Gender."
6. Break down the total workforce by race/ethnic background and enter under the heading "Workforce by Race/Ethnic Identification."
7. Enter the name, title, phone number, and E-mail address for the person completing the form. Sign and date the form in the designated boxes.

**RACE/ETHNIC IDENTIFICATION**

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

**WHITE** - (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa or the Middle East.

**BLACK** - (Not of Hispanic origin) A person who has origins in any of the black racial groups of Africa.

**HISPANIC or LATINO** - All persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

**ASIAN & PACIFIC ISLANDER** - All persons having origins in any of the original peoples of the Far East, Southeast Asia or the Indian Subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam. A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

**AMERICAN INDIAN or ALASKAN NATIVE** - A person having origins in any of the original peoples of North or South America (including Central America), and who maintains tribal affiliation or community recognition.

**OTHER CATEGORIES**

- **DISABLED INDIVIDUAL** - Any person who:
  - Has a physical or mental impairment that substantially limits one or more major life activity (ies)
  - Has a record of such an impairment; or
  - Is regarded as having such impairment.

- **VETERAN** - An individual who served in the military during time of war.

PHOTOCOPY LOCALLY AS NEEDED



# **APPENDIX H**

## **Contractor's Bid**

**(Appendix D Bid Cost Sheet is included)**

## **MICROGENICS CORPORATION**

**A Part Thermo Fisher Scientific  
Response to RFB**

### **NYS Department of Corrections and Community Supervision**

Support Operations – Contract Procurement Unit

### **Urinalysis Analyzers**

**Attn: Maria Henriquez-Nepaulsingh**

[doccscontracts@doccs.ny.gov](mailto:doccscontracts@doccs.ny.gov)

1220 Washington Avenue

Albany, NY 12226

**IFB 2018-06 Urinalysis Analyzers  
DUE DATE: May 23, 2018 3:00 p.m.**



1

## **MICROGENICS CORPORATION**

**NYS DEPARTMENT OF CORRECTIONS  
AND COMMUNITY SUPERVISION  
SUPPORT OPERATIONS – CONTRACT  
PROCUREMENT UNIT  
URINALYSIS ANALYZERS**

2

**NYS DEPARTMENT OF CORRECTIONS  
AND COMMUNITY SUPERVISION  
IFB #2018-06**

**RESPONSE TO RFI  
IFB #2018-06 Urinalysis Analyzers**

**DUE: May 23, 2018 3:00 PM**

3

**Microgenics Executive Summary  
Specifications &  
Attachment A, B, C, D, E & F**

4

**Microgenics Response to  
IFB# 2018-06,  
Addendum #1,  
Questions & Answers**

**Brenda Collum, Sales Representative  
Mobile: 1-518-441-6302  
[Brenda.Collum@thermofisher.com](mailto:Brenda.Collum@thermofisher.com)**

**Microgenics Corporation  
A Part of Thermo Fisher Scientific  
46500 Kato Road, Fremont, CA 94538 USA  
Tel: 1-510-979-5000 • Fax: 1-510-979-5485  
Customer/Technical Service 1-800-232-3342**

5

**Contact Information**



**MICROGENICS CORPORATION**  
**A Thermo Fisher Scientific Company**  
**Executive Summary****Response to NYS Department of Corrections and Community Supervision**  
**IFB #2018-06 Urinalysis Analyzers****SCOPE**

Microgenics Corporation meets the requirements in accordance with NYS Department of Corrections, to this IFB.

The Microgenics Corporation shall furnish the NYS DOC and Community Corrections with new benchtop urinalysis analyzers (Indiko Plus) to each of the 52 facility sites as per NYS DOC direction on a reagent rental contract. This includes Instrument service, consumables (excluding distilled water), calibrators, controls, training, Master Trainings, Administrative hearings and 24/7 hotline, all at no additional cost. In addition, the requested drugs of abuse assays shall be offered.

**INSTRUMENTATION AND PRODUCT FUNCTION: PLEASE SEE ATTACHMENT A FOR SPECIFIC INSTRUMENT INFORMATION. THE OPERATORS MANUAL HAS ALREADY BEEN PROVIDED WITH THE RFI BUT CAN BE PROVIDED AGAIN IF NEED BE. ALSO PLEASE SEE ATTACHMENT B FOR REAGENT LITERATURE AND INFORMATION**

**PRODUCT SPECIFICATIONS:**

Microgenics Corporation meets the requirements in accordance with NYS Department of Corrections, to this IFB.

**HARDWARE:**

- One **new** Indiko Plus Microgenics instrument will be provided to each of the 52 sites as specified by NY DOCCS.
- The Indiko Plus benchtop instrument can print a daily sheet of results for individuals tested that day as well as individual results
- The Indiko Plus can operate independent of internet connection however it can be interfaced as well.
- Thermo Fisher takes pride in being able to provide the instrument installations within the time frame required and can do so at the date and time requested by DOCCS with notice of at least a week.
- Thermo Fisher can complete the 52-instrument install and training in a 3-month time frame agreed to with NYS DOCCS.
- Thermo Fisher can start the instrument installation process as soon as July 6<sup>th</sup> with 30-day notice and finish in 3 months.

**REAGENTS + CONSUMABLE SHIPMENTS:**

- The reagent and instrument consumables are shipped overnight if order is placed on a Monday-Thursday. Friday orders are shipped out Monday for Tuesday. The first order of reagents would be arranged with the individual sites and Thermo Fisher to ensure reagents arrive with the instrument for installation. A startup kit would be provided with the instrument installation with enough supplies to get started.
- Reagents would be shipped "no charge shipping" as required

**CONSUMABLES:**

- All consumable orders are placed like reagent orders and would be shipped out overnight (as detailed for reagents above) with NO charge shipping charges as required.
- Thermo Fisher would develop a method for Correctional Facilities to order consumables and reagents as well (to be approved by NYS DOCCS). Currently at Thermofisher, we have our customers order reagents and/or consumables at the same time using a structured PO form (which would be created with the pricing and part #s for each facility). This PO would then be submitted via email to our main customer service email address as well as CC the local rep to ensure the order was completed.

**TRAINING:**

- At each of the 52 locations, Microgenics shall provide training to NYS Department of Corrections. Microgenics shall provide 5 staff members (operators) proficiency and certification training of the equipment, reagents with discussions on adulterations, how to order, part #s and cross-reactivity upon instrument installation as well as a paper test to ensure the staff member has retained this information. Training certificates will be provided. There is no additional charge for these trainings. This meets NYS DOCCS requirements
- Master training classes will be provided 1/ year for each of the HUBS (4 staff / hub) as required as part of the bid at the request of the NYS DOCCS for location and time frame. Thermo Fisher would need as early notification as possible. Each of the Master Training classes will be done with the intention of making the staff members the expert in drug testing on the Indiko Plus benchtop instrument, the expert on current drug trends, maintenance, ordering part #s, cross-reactivity and with a yearly update addendum added to these trainings as see fit. Also, provided with a test of further proficiency and certification. This section is at no additional cost and meets the bid requirements

**SUPPORT AND MAINTENANCE:**

- Operator manuals can be provided in English. Upon request Spanish, French and German manuals can be provided and are at no charge
- This bid comes with a maintenance agreement for the life of the agreement during 8-5pm Monday –Friday (no weekend or state holidays). The service agreement covers the following:
  - 24/7 telephone support.
  - Preventive maintenance was determined based on National studies of meantime between failure to only need 1 PM /year.
  - Will provide a 24-hour Response time after onsite service is determined to be needed.
  - All travel, parts and labor are no at no additional charge for the repair of the instrument excluding acts of clear undeniable sabotage (hammer to the instrument, spray paint etc.) or acts of nature (i.e. a roof falling in on instrument)
  - If a replacement instrument is required due to engineer report, a replacement will be received by 48 hours in best case not including any weather-related shipping delays.
  - Software replacement if determined is necessary, will be shipped as soon as possible with best case 24- 48 hours not including any shipping delays. We will replace the instrument or the software which ever can be done faster so that you are not impacted.
  - Microgenics offers 24/7 helpdesk assistance 365 days a year
  - Microgenics welcomes feedback and any feedback would be directed through local sales rep.

- Microgenics instrument comes with a warranty
- Should an instrument or part return be necessary, no additional cost would occur.

## **THERMOFISHER SUPPORT INCLUDES:**

### **Customer Service:**

- ✓ Our Customer Service Department [1-800-232-3342] is open from 6:00 a.m. to 5:00 p.m. Pacific Time Monday through Friday to process product orders.

### **Technical Support:**

- ✓ 24/7 365 days/year Technical Phone Support (Hotline/" Helpdesk")  
based in California M-F 7:30am-4:30pm PST

CEDIA+ DRI Reagent as well as Indiko Plus instrument support:

[techservice.mgc@thermofisher.com](mailto:techservice.mgc@thermofisher.com)

1-800-232-3342 – opt 2, opt 3

After-hours calls are routed to voicemail boxes with emergency calls being returned within 2 hours.

Our experienced Technical support team has earned an industry-wide reputation for their accessibility and problem solving tenacity. When you call technical support, they will determine and send a request to the service management team should you require an onsite Field Technical support and /or a Field Service Engineer.

### **Testimony:**

This meets the NYS DOCCS bid requirements

- ✓ Microgenics shall provide testimony in administrative hearings through our Technical Support Hotline [1-800-232-3342 Option #2 Option #3] during the hours of 9am-5pm EST Monday-Friday covering questions concerning the Indiko Plus operation, calibration, maintenance, procedures, reagents and cross-reactivity. At times, with heavy call volumes, the Technical representatives may be on other calls and in that case, you can leave a message or call back. Please provide Thermo Fisher Scientific a notice as early as possible, with (if possible) any advance notice for these administrative hearings. This will enable Thermo Fisher Scientific to schedule availability of specific resources!
- ✓ In the event of litigation and if so required, Microgenics will provide an expert in the field of urinalysis drug testing to assist NYS Attorney General's Office or DOCCS Counsel's Office in defending issues that may arise from urinalysis testing of inmates.

## **FURTHER ASSAY/REAGENT SPECIFICATIONS**

### **ASSAY/REAGENT SPECIFICATIONS: (SEE ATTACHMENT B FOR FURTHER INFORMATION)**

- Thermofisher has provided the assays requested in the pricing list and this meets the NYS Department of Corrections requirement.
- Microgenics will provide the necessary calibrators and controls for the urinalysis tests listed in the bid request, at no charge. The calibrators and controls meet the cutoff concentration requirements in the bid specifications.
- Thermo Fisher Drugs of abuse reagents are Food and Drug Administration (FDA) cleared with the exception of EtG (pending FDA 510K approval).
- Microgenics meets or exceeds the requirements stated in solicitation Substance Abuse and Mental Health Services Administration (SAMSHA) cutoff detection level guidelines over the life of this contract

- Microgenics proprietary DRI products are at the leading edge of a new generation of testing solutions offering high analytical accuracy and are liquid, ready-to-use homogeneous enzyme immunoassays
- Microgenics Proprietary CEDIA reagents are powder and come with a specific clip on liquid for a no mistake reconstitution. These reagents are also highly valued for specificity with assay metabolites in the field as well as highly accurate.

## EXPERIENCE ON CONTRACTS OF SIMILAR SIZE AND SCOPE

Microgenics Corporation was awarded contracts with the United States Pretrial and Probation, the Naval Medical Logistics/Department of Defense, Department of Veteran's Affairs, Arkansas Department of Community Corrections, Missouri Department of Corrections as well as various other local governments/municipalities and large-scale commercial laboratories. In addition, Microgenics has contracts with criminal justice/drug courts nationally.

Microgenics provides instrumentation, instrument consumables, screening reagents, calibrators and controls, service, water systems, and ongoing technical assistance. On a consistent and ongoing basis, Microgenics is the primary contractor for some of the largest independent SAMHSA laboratories in the U.S. Microgenics demonstrates an ability to supply the needs of the federal government's most stringent drug testing program. The diversity of government contract awards demonstrates Microgenics' ability to work with a variety of governmental agencies and their drug testing programs.

We at Microgenics look forward to the opportunity to demonstrate the same high quality products and services in servicing the State of New York.

## AUTHORIZED NEGOTIATORS

Microgenics Corporation represents that the following persons are authorized to negotiate on its behalf regarding all matters pertaining to this bid:

Microgenics Corporation  
A Part of Thermo Fisher Scientific  
46500 Kato Road  
Fremont, CA 94538  
1-800-232-3342 - Phone  
1-800-829-8115 - Fax  
Federal ID: 68-0418167  
[www.thermoscientific.com/diagnostics](http://www.thermoscientific.com/diagnostics)

Contacts:  
Brenda Collum, Sales Representative  
1-518-441-6302 - Mobile  
[Brenda.Collum@thermofisher.com](mailto:Brenda.Collum@thermofisher.com)  
Larry Wilkie, Regional Sales Manager  
1-504-905-7630 – Mobile  
1-504-617-7716 – Main  
[Larry.wilkie@thermofisher.com](mailto:Larry.wilkie@thermofisher.com)



# Corrections and Community Supervision

## INVITATION FOR BIDS (IFB) 2018-06 URINALYSIS ANALYZERS

Issue Date: May 1, 2018

Bid Due Date & Time: May 23, 2018 – 3:00 p.m.

Contract Period: September 1, 2018 – August 31, 2023

### Designated Contact

Name: Marla Henriquez-Nepaulsingh  
Phone: (518) 436-7886 ext. 3135  
Email: [doccscontracts@doccs.ny.gov](mailto:doccscontracts@doccs.ny.gov)

### Alternate Designated Contact

Name: David Gambacorta  
Phone: (518) 436-7886 ext. 3135  
Email: [doccscontracts@doccs.ny.gov](mailto:doccscontracts@doccs.ny.gov)

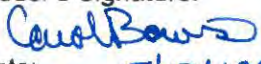


## BID SIGNATURE PAGE

The bid must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this INVITATION FOR BIDS, Appendix A (Standard Clauses For New York State Contracts), Appendix B (General Specifications), and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, bidder affirms that it understands and agrees to comply with DOCCS procedures relative to permissible contacts as required by State Finance Law §139-j(3) and §139-j(6)(b). Bidders are requested to retain Appendix A and Appendix B for future reference.

Procurement Lobbying information may be accessed at:

<http://www.ogs.ny.gov/aboutogs/regulations/defaultAdvisoryCouncil.html>

Legal Business Name of Company Bidding: <b>Microgenics Corporation</b>				NYS Vendor Identification Number: (see NYS vendor file registration clause) <b>1000009626</b>	
D/B/A – Doing Business As (if applicable): <b>Thermo Fisher Scientific</b>				Federal Tax Identification Number: (do not use Social Security Number) <b>68-0418167</b>	
Street <b>46500 Kato Road</b>	City <b>Fremont</b>	State <b>CA</b>	Zip <b>94538</b>	County <b>Alameda</b>	
<p>If applicable, place an "x" next to each that apply:</p> <p> <input type="checkbox"/> New York State Small Business  <input type="checkbox"/> New York State Certified Minority-owned Business Enterprise (MBE)  <input type="checkbox"/> New York State Certified Woman-owned Business Enterprise (WBE)         </p> <p>Vendor Responsibility Questionnaire Filed Online: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Do you understand and is your firm capable of meeting the insurance requirements to enter into a contract with New York State? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Does your bid proposal meet all the requirements of this solicitation? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>					
<p>If you are not bidding, place an "x" in the box and return this page only.</p> <p><input type="checkbox"/> WE ARE UNABLE TO BID AT THIS TIME BECAUSE _____</p> <p>_____</p> <p>_____</p>					
Phone: <b>510-979-5000</b> Fax: <b>510-979-5008</b>			Toll Free Phone: <b>1-800-232-3392</b>		
E-mail Address: <b>USFMTMCC-Contractsadmin@thermofisher.com</b>			Company Web Site: <b>www.thermofisher.com</b>		
Bidder's Signature:  Date: <b>5/17/18</b>			Printed or Typed Name: <b>Carol Bowers</b> Title: <b>Sr. Finance Director</b>		

**RETURN THIS PAGE AS PART OF THE BID**

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF California }  
COUNTY OF } SS.:

On the 17 day of May in the year 2018, before me personally appeared \_\_\_\_\_, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that **She** resides at \_\_\_\_\_,

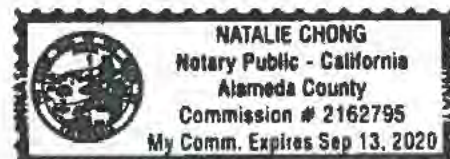
Town of \_\_\_\_\_,

County of Alameda, State of California; and further that:

**[Check One]**

- ☐ If an individual): he executed the foregoing instrument in his/her name and on his/her own behalf.
- ☒ If a corporation): She is the Sr. Finance Director of Microgenics Corporation, Niche, CDD, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, **She** is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, **She** executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
- ☐ If a partnership): he is the \_\_\_\_\_ of \_\_\_\_\_, the partnership described in said instrument; that, by the terms of said partnership, he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
- ☐ If a limited liability company): he is a duly authorized member of \_\_\_\_\_, LLC, the limited liability company described in said instrument; that he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Natalie Chong  
Notary Public  
Registration No.



RETURN THIS PAGE AS PART OF THE BID



**CHECKLIST****IFB 2018-06 URINALYSIS ANALYZERS**

All bidders must complete the checklist presented below and submit the following forms listed in the checklist as required for each bid submission.

**SUBMISSION DOCUMENTS PACKAGE (SIGNATURES REQUIRED)**

This Checklist



Completed Bid Signature Page (pages 2-3)



Bidder's Federal Tax Identification Number



NYS Vendor Identification Number



Bidder's Signature

Individual, Corporation, Partnership, or LLC Acknowledgement (*must be notarized*)

Completed Procurement Lobbying Certification (page 8)



Bid Response / Signature Page (pages 2)



Bid Cost Sheet (pages 28-30)



Notes to Bidders and Questions (pages 31-32)

Vendor Responsibility Questionnaire – Check one of the following:

Paper Submission

**OR**Electronic Filing - Certified Date: 9-21-2017*(Must be certified within the last 6 months)*

Non-Disclosure Form (Attachment B)



Vendor Assurance of No Conflict of Interest or Detrimental Effect (Attachment C)

Contractor Certification Forms (*Must Be Notarized*)Form ST-220-TD (*File Directly with the Department of NYS Tax & Finance*)Form ST-220-CA (*Submit with Bid*)

M/WBE – Equal Employment Opportunity Policy Statement (Appendix C)



Equal Employment Opportunity (EEO) Staffing Plan (Appendix C)

Signature

Lovetta Barkus

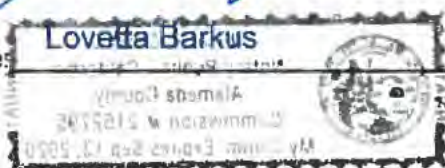
Date:

5-17-2018

Print Name:

Lovetta Barkus

Name of Company:

Microgenics Corporation**RETURN THIS PAGE AS PART OF THE BID**

## GENERAL INFORMATION

### **PURPOSE:**

This Invitation for Bids (IFB) is issued by the New York State Department of Corrections and Community Supervision (DOCCS). The purpose of this bid is for DOCCS to obtain competitive prices for reagent rentals of bench top urinalysis analyzer services to be used in its correctional facilities for inmates. The bidder must also include the installation, training, technical support, and maintenance of equipment in DOCCS facilities.

### **SPECIFICATIONS:**

Detailed specifications for this solicitation are provided in the Scope of Services, page 25-26, in this IFB.

DOCCS intends to award one vendor a contract for this service. The term of this contract will be for a period of five (5) years, effective September 1, 2018 through August 31, 2023.

### **INQUIRIES / ISSUING OFFICE:**

All inquiries concerning this specification will be addressed to the following **Designated Contact**:

#### **PRIMARY CONTACT**

Marla Henriquez-Nepaulsingh  
 NYSDOCCS  
 Division of Support Operations / Contract  
 Procurement Unit  
 550 Broadway  
 Menands, NY 12204  
 Phone No.: 518-436-7886, ext. 3135  
 E-Mail: Doccscontracts@doccs.ny.gov

#### **SECONDARY CONTACT**

David Gambacorta  
 NYSDOCCS  
 Division of Support Operations / Contract  
 Procurement Unit  
 550 Broadway  
 Menands, NY 12204  
 Phone No.: 518-436-7886, ext. 3135  
 E-Mail: Doccscontracts@doccs.ny.gov

**Contacting someone else may result in rejection of bid – see “Procurement Lobbying Act”.**

All questions should be submitted in writing, citing the particular bid sections and paragraph number. Bidders are cautioned to read this document thoroughly to become familiar with all aspects of the bid. Prospective Bidders should note that all clarifications and exceptions including those relating to the terms and conditions of the contract are to be resolved prior to the submission of a bid. Answers to all questions of a substantive nature will be given to all Prospective Bidders in the form of a formal addendum which will become part of the ensuing contract. Bidders entering into a contract with the State are expected to comply with all the terms and conditions contained herein.

### **KEY EVENTS/DATES:**

Invitation for Bids (IFB) Issued	May 1, 2018
Written Bidders' Questions Deadline	May 11, 2018
DOCCS Issues Answers to Questions (estimated)	May 15, 2018
Bids Due to DOCCS	May 23, 2018
Tentative Award Made (estimated)	May 25, 2018
Contract Start Date	September 1, 2018

### **QUALIFICATION OF BIDDERS:**

Bidders must be actively engaged in reagents drug testing/urinalysis analyzer services for a minimum of five (5) years.

## GENERAL INFORMATION

DOCCS reserves the right to investigate or make any inquiry into the capabilities of any bidder to properly perform under any resultant contract. See "Performance Qualifications," "Disqualification for Past Performance" and "Employees/Subcontractors/Agents" in Appendix B, Specifications.

### **REQUIREMENTS:**

- A. Contractor must be able to perform all of the services outlined in the, Scope of Services.
- B. Contractor will comply with all standards and appropriate regulations governing contracts with the State of New York (Appendix A – January 2014).
- C. No illegal drug use of any type or alcoholic beverages by the Contractor or its personnel shall be permitted in the performance of the contract.
- D. Contractor agrees to take all steps reasonably necessary to protect the secrecy of the Confidential Information, and to prevent the Confidential Information from falling into the public domain or into the possession of unauthorized persons. Such steps shall include keeping Confidential Information stored where only authorized personnel would have access.

**IMPORTANT NOTICE TO POTENTIAL BIDDERS:** Receipt of these bid documents does not indicate that the NYS Department of Corrections and Community Supervision (DOCCS) – Contract Procurement Unit (CPU) has pre-determined your company's qualifications to receive a contract award. Such determination will be made after the bid opening and will be based on our evaluation of your bid submission compared to the specific requirements and qualifications contained in these bid documents.

### **NOTICE TO BIDDERS:**

The DOCCS - Contract Procurement Unit (CPU) will receive bids pursuant to the provisions of Article XI of the State Finance Law or the provisions of the State Printing and Public Documents Law. The following procedures shall be used for bid submittals:

#### **1. BID PREPARATION**

Prepare your bid on this form using indelible ink. Print the name of your company on each page of the bid in the block provided. One copy of the bid is required, unless otherwise specified herein.

#### **2. BID SUBMISSION**

When submitting your bid, please submit complete original bid package, including all bidder questions and required certifications. You are not required to return Appendix A and Appendix B to this office. You may keep all those pages for your own reference.

#### **3. BID DELIVERY**

**Bidders assume all risks for timely, properly submitted deliveries.** Bidders are strongly encouraged to arrange for delivery of bids to DOCCS - CPU prior to the date of the bid opening. **LATE BIDS may be rejected. E-mail bid submissions are not acceptable and will not be considered.**

- **Bid envelopes**

The envelope containing a bid should be marked "**BID ENCLOSED**" and state the **Bid Number, Bid Opening Date, and Time** on the envelope containing the sealed bid. Failure to complete all information on the bid envelope may necessitate the premature opening of the bid and may compromise confidentiality. See "Bid Submission" in Appendix B, General Specifications. Bids shall be delivered to:

State of New York  
Department of Corrections and Community Supervision  
Division of Support Operations/Contract Procurement Unit  
Attention: Marla Henriquez-Nepaulsingh  
550 Broadway  
Menands, NY 12204  
IFB #2018-06 – Urinalysis Analyzers



## GENERAL INFORMATION

- **Hand deliveries**

Bidders must allow extra time to comply with the security procedures which may be in effect when hand delivering bids or using deliveries by independent courier services. **Bidders assume all risks for timely, properly submitted deliveries.**

### **NON-COLLUSIVE BIDDING CERTIFICATION:**

**(Reference: State Finance Law Section 139-d and Appendix A, Clause 7)**

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

(1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

(3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not submit a bid for the purpose of restricting competition.

In the event that the bidder is unable to certify as stated above, the bidder shall provide a signed statement which sets forth in detail the reasons why the bidder is unable to furnish the certificate as required in accordance with State Finance Law Section 139-d(1)(b).

### **PROCUREMENT LOBBYING ACT:**

#### **SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING**

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between DOCCS – CPU and an Offerer/bidder during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit offers/bids through final award and approval of the Procurement Contract by DOCCS – CPU and if applicable, the Office of General Services, and/or the Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a). Designated staff, as of the date hereof, is identified on the first page of this solicitation. DOCCS – CPU employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four-year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the website: <http://ogs.ny.gov/Aboutogs/regulations/defaultAdvisoryCouncil.html>.

### **PROCUREMENT LOBBYING TERMINATION:**

DOCCS - CPU reserves the right to terminate this contract in the event it is found that the certification filed by the Offerer/bidder in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, DOCCS – CPU may exercise its termination right by providing written notification to the Offerer/bidder in accordance with the written notification terms of this contract.



## PROCUREMENT LOBBYING CERTIFICATION

By signing, the offeror/bidder affirms that it understands and agrees to comply with the NYS Department of Corrections and Community Supervision (DOCCS) procedures relative to permissible contacts, as required by State Finance Law §139-j and §139-k.

Procurement Lobbying information can be accessed at:

<http://www.oqs.ny.gov/aboutoqs/regulations/advisoryCouncil/sf139-j.htm> and

<http://www.oqs.ny.gov/aboutoqs/regulations/advisoryCouncil/sf139-k.htm>

Offeror affirms that it understands and agrees to comply with the procedures of the Government Entity relative to permissible Contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

By: Carol Bowers Date: 5/17/18

Name: Carol Bowers Title: Sr. Finance Director

Contractor Name: Microgenics Corporation

Contractor Address: 46500 Kato Road , Fremont, CA 94538

### Prior Non-Responsibility Determinations – State Finance Law §139-k

1. Has any Government Entity made a finding of non-responsibility against this organization/company? No Yes
2. If yes, was the basis for the finding of non-responsibility due to a violation of SFL§139-j or due to the intentional provision of false or incomplete information to a Government Entity? No Yes
3. Has any Government Entity terminated or withheld a procurement contract with this organization/company due to the intentional provision of false or incomplete information? No Yes

*If yes to any of the above questions, provide complete details on a separate page and attach.*

### Offerer Certification:

I certify that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By: Carol Bowers Date: 5/17/18

Name: Carol Bowers Title: Sr. Finance Director

### Procurement Lobbying Termination

DOCCS reserves the right to terminate this contract in the event it is found that the certification filed by the Offeror/bidder in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, DOCCS may exercise its termination right by providing written notice to the Offeror/bidder in accordance with the written notification terms of the contract.

**RETURN THIS PAGE AS PART OF THE BID**



## GENERAL INFORMATION

### **TAX LAW § 5-A:**

TAX LAW § 5-A (Amended April 26, 2006):

Tax Law § 5-a, as amended on April 26, 2006, requires certain contractors who are awarded state contracts for commodities and/or services valued at more than **REDACTED** (over the full term of the contract, excluding renewals) to certify to the Department of Taxation and Finance (DTF) they are registered to collect New York State (NYS) and local sales and compensating use taxes. The law applies to contracts where the total amount of the contractor's sales delivered into NYS exceed **REDACTED** for the four quarterly periods immediately preceding the quarterly period when the certification is made; and with respect to any affiliates and subcontractors whose sales delivered into NYS also exceed **REDACTED** in the same manner as noted above for the contractor.

This law imposes upon certain contractors the obligation to certify whether or not the contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use tax. The contractors must certify to DTF that each affiliate and subcontractor exceeding the sales threshold is registered with DTF to collect such State and local sales and compensating use taxes. The law prohibits the Comptroller, or other approving agency, from approving a contract to a vendor who is not registered in accordance with the law.

There are two (2) Contractor certification forms, with instructions, attached to this bid. **Form ST-220-TD is to be removed from this bid and submitted directly to DTF. Submission to DTF is a one-time occurrence. If you have already submitted this form to DTF for other bidding opportunities, you do not need to submit the form attached to this bid. If, however, any certification information changes, a new ST-220-TD must be filed with DTF. Form ST-220-CA must be completed and submitted with this bid. This form certifies to the procuring agency that the contractor has filed ST-220-TD with DTF in compliance with the law.**

Bidders should complete and submit the certification forms within two business days of request (if the forms are not submitted to DTF and/or returned with bid). Bidders shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law, as failure to do so may render a bidder non-responsive and non-responsible.

Vendors may call DTF at 1-800-698-2909 for any and all questions relating to Tax Law § 5-a and relating to a company's registration status with DTF. For additional information and frequently asked questions, please refer to the DTF web site: <http://www.tax.ny.gov>.

### **TERMINATION FOR VIOLATION OF Revised Tax Law 5a:**

NYS DOCCS reserves the right to terminate this contract in the event it is found that the certification filed by the Contractor in accordance with § 5-a of the Tax Law is not timely filed during the term of the contract or the certification furnished was intentionally false or intentionally incomplete. Upon such finding, (facility name) may exercise its termination right by providing written notification to the Contractor.

### **DISPUTE RESOLUTION POLICY:**

It is the policy of the DOCCS – CPU and the Office of the State Comptroller to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to NYS bid solicitations or contract awards. DOCCS – CPU and the Office of the State Comptroller encourages vendors to seek resolution of disputes through consultation with DOCCS – CPU staff. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes.

### **DEBRIEFING:**

Bidders will be accorded fair and equal treatment with respect to their opportunity for debriefing. Disclosure of the content of competing bids other than statistical tabulations of bids received in response to an IFB, is prohibited prior to contract award. Prior to final contract award, DOCCS-CPU shall, upon request, provide a debriefing which would be limited to review of that bidder's proposal or bid. Requests for a debriefing prior to final contract award by an unsuccessful bidder(s) must be addressed to DOCCS - CPU in writing. The debriefing prior to final contract award must be requested in writing within 15 calendar days of notification that the bidder's submission was unsuccessful.

After final contract award, DOCCS-CPU shall, upon request, provide a debriefing to any bidder that responded to the IFB, regarding the reason that the proposal or bid submitted by the unsuccessful bidder was not selected for a contract award. Requests for debriefing by an unsuccessful bidder(s) must be addressed to DOCCS-CPU in writing. The post-award debriefing should be required in writing by the bidder within 30 calendar days of contract approval by OSC.



## GENERAL INFORMATION

### **APPENDIX A:**

Appendix A, Standard Clauses For New York State Contracts, dated January 2014, attached hereto, is hereby expressly made a part of this Bid Document as fully as if set forth at length herein. **Please retain this document for future reference.**

### **APPENDIX B:**

Appendix B, General Specifications (Commodities and Non-Technology Services), dated August 2012, attached hereto, is hereby expressly made a part of this Bid Document as fully as if set forth at length herein and shall govern any situations not covered by this Bid Document or Appendix A. **Please retain this document for future reference.**

### **APPENDIX C:**

Appendix C, CONTRACTOR REQUIREMENTS FOR EEO AND MWBE, attached hereto expressly made a part of this Bid Document as fully as if set forth at length herein and shall govern any situations not covered by this Bid Document or Appendix A. **Please retain this document for future reference.**

### **CONFLICT OF TERMS AND CONDITIONS:**

Conflicts between documents shall be resolved in the following order of precedence:

- a. Appendix A
- b. This Invitation for Bids
- c. Appendix B
- d. Appendix C
- e. Bidder's Bid

### **CONTRACTOR REQUIREMENTS FOR EEO AND MWBE:**

**CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN**

New York State Law: Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations DOCCS is required to promote opportunities for the maximum feasible participation of New York State-certified Minority and Women-owned Business Enterprises ("MWBEs") and the employment of minority group members and women in the performance of DOCCS contracts.

#### **Business Participation Opportunities for MWBEs**

For purposes of this solicitation, DOCCS hereby establishes an overall goal of 0% for MWBE participation, 0% for New York State-certified Minority-owned Business Enterprise ("MBE") participation and 0% for New York State-certified Women-owned Business Enterprise ("WBE") participation (based on the current availability of MBEs and WBEs). A contractor ("Contractor") on any contract resulting from this procurement ("Contract") must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this IFB, the bidder agrees that DOCCS may withhold payment pursuant to any Contract awarded as a result of this IFB pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how DOCCS will evaluate a Contractor's "good faith efforts," refer to 5 NYCRR § 142.8.

The bidder understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal.

The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract.

In accordance with 5 NYCRR § 142.13, the bidder further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this solicitation, such finding constitutes a breach of contract and DOCCS may withhold payment as liquidated damages.

## GENERAL INFORMATION

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a bidder agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System ("NYSCS"), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a bidder may arrange to provide such evidence via a non-electronic method by contacting the designated contact(s) for this procurement. Additionally, a bidder will be required to submit the following documents and information as evidence of compliance with the foregoing:

1. An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to DOCCS for review and approval.

DOCCS will review the submitted MWBE Utilization Plan and advise the bidder of DOCCS acceptance or issue a notice of deficiency within 30 days of receipt.

2. If a notice of deficiency is issued, the bidder will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to DOCCS, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by DOCCS to be inadequate, DOCCS shall notify the bidder and direct the bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

DOCCS may disqualify a bidder as being non-responsive under the following circumstances:

- a) If a bidder fails to submit an MWBE Utilization Plan;
- b) If a bidder fails to submit a written remedy to a notice of deficiency;
- c) If a bidder fails to submit a request for waiver; or
- d) If DOCCS determines that the bidder has failed to document good faith efforts.

The successful bidder will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to DOCCS, but must be made no later than prior to the submission of a request for final payment on the Contract.

The successful bidder will be required to submit a quarterly M/WBE Contractor Compliance & Subcontractor Payment Report to DOCCS, by the 10<sup>th</sup> day following each end of quarter as applicable over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

### **Equal Employment Opportunity Requirements**

By submission of a bid or proposal in response to this solicitation, the bidder agrees with all of the terms and conditions of Appendix A – Standard Clauses for All New York State Contracts including Clause 12 - Equal Employment Opportunities for Minorities and Women. The bidder is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the bidder, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The bidder will be required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement to DOCCS with its bid or proposal.



## GENERAL INFORMATION

If awarded a Contract, bidder shall submit a Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by DOCCS on a quarterly basis as required during the term of the Contract.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

**Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.**

### **USE OF SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES IN CONTRACT PERFORMANCE**

Article 17-B of the Executive Law enacted in 2014 acknowledges that Service-Disabled Veteran-Owned Businesses (SDVOBs) strongly contribute to the economies of the State and the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. SDVOBs can be readily identified on the directory of certified businesses at [http://ogs.ny.gov/Core/docs/CertifiedNYS\\_SDVOB.pdf](http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf).

For purposes of this procurement, the DOCCS hereby establishes an overall goal of 0% for SDVOB participation based on the current availability of qualified SDVOBs. Bidders/proposers need to be aware that all authorized users of this contract will be strongly encouraged to the maximum extent practical and consistent with legal requirements of the State Finance Law and the Executive Law to use responsible and responsive SDVOBs in purchasing and utilizing commodities, services and technology that are of equal quality and functionality to those that may be obtained from non-SDVOBs. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses consistent with current State law.

Utilizing SDVOBs in State contracts will help create more private sector jobs, rebuild New York State's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its SDVOB partners. SDVOBs will promote the contractor's optimal performance under the contract, thereby fully benefiting the public-sector programs that are supported by associated public procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of SDVOBs by its contractors. The State, therefore, expects bidders/proposers to provide maximum assistance to SDVOBs in their contract performance. The potential participation by all kinds of SDVOBs will deliver great value to the State and its taxpayers.

### **FREEDOM OF INFORMATION LAW / TRADE SECRETS:**

During the evaluation process, the content of each bid will be held in confidence and details of any bid will not be revealed (except as may be required under the Freedom of Information Law or other State law). The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. This exemption would be effective both during and after the evaluation process.

Should you feel your firm's bid contains any such trade secrets or other confidential or proprietary information, you must submit a request to exempt such information from disclosure. Such request must be in writing, must state the reasons why the information should be exempt from disclosure and must be provided at the time of submission of the subject information.

Requests for exemption of the entire contents of a bid from disclosure have generally not been found to be meritorious and are discouraged. Kindly limit any requests for exemption of information from disclosure to bona fide trade secrets or specific information, the disclosure of which would cause a substantial injury to the competitive position of your firm.



## GENERAL INFORMATION

### **NEW YORK STATE VENDOR FILE REGISTRATION:**

Prior to being awarded a contract pursuant to this Solicitation, the Bidder(s) and any designated authorized resellers who accept payment directly from the State, must be registered in the New York State Vendor File (Vendor File) administered by the Office of the State Comptroller (OSC). This is a central registry for all vendors who do business with New York State Agencies and the registration must be initiated by a State Agency. Following the initial registration, unique New York State ten-digit vendor identification numbers will be assigned to your company and to each of your authorized resellers (if any) for usage on all future transactions with New York State. Additionally, the Vendor File enables vendors to use the Vendor Self-Service application to manage all vendor information in one central location for all transactions related to the State of New York. If Bidder is already registered in the New York State Vendor File, list the ten-digit vendor ID number on the Bid Proposal Form (Attachment 1). Authorized resellers already registered should list the ten-digit vendor ID number along with the authorized reseller information.

If the Bidder is not currently registered in the Vendor File and is recommended for award, DOCCS shall request completion of OSC Substitute W-9 Form. A fillable form with instructions can be found at the link below. In addition, if authorized resellers are to be used, an OSC Substitute W-9 form should be completed by each of the designated authorized resellers and submitted to the Office of General Services Business Services Center. The Office of General Services Business Services Center will initiate the vendor registration process for all Bidders recommended for Contract Award and their authorized resellers. Once the process is initiated, registrants will receive an email from OSC that includes the unique ten-digit vendor identification number assigned to the company and instructions on how to enroll in the online Vendor Self-Service application. For more information on the vendor file please visit the following website: [http://www.osc.state.ny.us/vendor\\_management](http://www.osc.state.ny.us/vendor_management)

Form to be completed: [http://www.osc.state.ny.us/vendors/forms/ac3237\\_fe.pdf](http://www.osc.state.ny.us/vendors/forms/ac3237_fe.pdf)

### **NYS VENDOR RESPONSIBILITY QUESTIONNAIRE:**

DOCCS conducts a review of prospective contractors ("Bidders") to provide reasonable assurances that the Bidder is responsive and responsible. A Questionnaire is used for non-construction contracts and is designed to provide information to assess a Bidder's responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. By submitting a bid, Bidder agrees to fully and accurately complete the "Questionnaire." The Bidder acknowledges that the State's execution of the Contract will be contingent upon the State's determination that the Bidder is responsible, and that the State will be relying upon the Bidder's responses to the Questionnaire when making its responsibility determination.

DOCCS recommends each Bidder file the required Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, please refer to the VendRep System Instructions and User Support for Vendors available at the Office of the State Comptroller's (OSC) website, [http://www.osc.state.ny.us/vendrep/vendor\\_index.htm](http://www.osc.state.ny.us/vendrep/vendor_index.htm) or to enroll, go directly to the VendRep System online at <https://portal.osc.state.ny.us>

OSC provides direct support for the VendRep System through user assistance, documents, online help, and a help desk. The OSC Help Desk contact information is located at <http://www.osc.state.ny.us/portal/contactbuss.htm>. Bidders opting to complete the paper questionnaire can access this form and associated definitions via the OSC website at: [http://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](http://www.osc.state.ny.us/vendrep/forms_vendor.htm)

The Contractor must remain a responsible vendor throughout the duration of the contract and, if at any time the Contractor is found to be not responsible or there is a question as to the vendor's responsibility, any activities pursuant to the contract may be suspended. Finally, the contract may be terminated following a finding of non-responsibility.

To assist the State in determining the responsibility of the Bidder, the Bidder should complete and certify (or recertify) the Questionnaire no more than six (6) months prior to the bid due date.

A Bidder's Questionnaire cannot be viewed by DOCCS until the Bidder has certified the Questionnaire. It is recommended that all Bidders become familiar with all of the requirements of the Questionnaire in advance of the bid opening to provide sufficient time to complete the Questionnaire.



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The Bidder agrees that if it is found by the State that the Bidder's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, DOCCS may terminate the Contract. In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

The CONTRACTOR shall at all times during the Contract term remain responsible. The CONTRACTOR agrees, if requested by the Commissioner of DOCCS or his designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

The DOCCS Commissioner or his designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the DOCCS Commissioner or his designee issues a written notice authorizing a resumption of performance under the Contract.

### **CONFLICT OF INTEREST:**

Bidder must disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers of the Respondent or former officers and employees of the Agencies and their Affiliates, in connection with your rendering services enumerated in this IFB. If a conflict does or might exist, please describe how your Staffing Firm would eliminate or prevent it. Indicate what procedures will be followed to detect, notify the Agencies of, and resolve any such conflicts.

Bidder must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, "Commission"), and if so, a brief description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

Additionally, a bidder will be required to submit the ***Vendor Assurance of No Conflict of Interest or Detrimental Effect*** form located within this IFB as evidence of compliance with the foregoing.

### **PUBLIC OFFICERS LAW:**

Contractors, consultants, vendors, and subcontractors may hire former State Agency or Authority employees. However, as a general rule and in accordance with New York Public Officers Law, former employees of the State Agency or Authority may neither appear nor practice before the State Agency or Authority, nor receive compensation for services rendered on a matter before the State Agency or Authority, for a period of two years following their separation from State Agency or Authority service. In addition, former State Agency or Authority employees are subject to a "lifetime bar" from appearing before the State Agency or Authority or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with the State Agency or Authority.

### **ETHICS REQUIREMENTS:**

The Contractor and its Subcontractors shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively, the "Ethics Requirements"). The Contractor certifies that all of its employees and those of its Subcontractors who are former employees of the State and who are assigned to perform services under this Contract shall be assigned in accordance with all Ethics Requirements. During the Term, no person who is employed by the Contractor or its Subcontractors and who is disqualified from providing services under this Contract pursuant to any Ethics Requirements may share in any net revenues of the Contractor or its Subcontractors derived from this Contract. The Contractor shall identify and provide the State with notice of those employees of the Contractor and its Subcontractors who are former employees of the State that will be assigned to perform services under this Contract, and make sure that such employees comply with all

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applicable laws and prohibitions. The State may request that the Contractor provide it with whatever information the State deems appropriate about each such person's engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The State shall have the right to withdraw or withhold approval of any Subcontractor if utilizing such Subcontractor for any work performed hereunder would be in conflict with any of the Ethics Requirements. The State shall have the right to terminate this Contract at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.

### **SUBCONTRACTING:**

The Contractor agrees not to subcontract any of its services, unless as indicated in its bid, without the prior written approval of the DOCCS. Approval shall not be unreasonably withheld upon receipt of written request to subcontract.

The Contractor may arrange for a portion/s of its responsibilities to be subcontracted to qualified, responsible subcontractors, subject to approval of the DOCCS. If the Contractor determines to subcontract a portion of the services, the subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance must be fully explained by the Contractor to the DOCCS. As part of this explanation, the subcontractor must submit to the DOCCS a completed *Vendor Assurance of No Conflict of Interest or Detrimental Effect* form, as required by the Contractor prior to execution of a contract.

The Contractor retains ultimate responsibility for all services performed under a contract.

All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of this IFB. Unless waived in writing by DOCCS, all subcontracts between the Contractor and subcontractors shall expressly name DOCCS as the sole intended third party beneficiary of such subcontract. DOCCS reserves the right to review and approve or reject any subcontract, as well as any amendment to said subcontract(s), and this right shall not make DOCCS a party to any subcontract or create any right, claim, or interest in the subcontractor or proposed subcontractor against DOCCS.

DOCCS reserves the right, at any time during the contract term to verify that the written subcontract between the Contractor and subcontractors is in compliance with all of the provisions of this Section and any subcontract provisions contained in this IFB.

The Contractor shall give DOCCS immediate notice in writing of the initiation of any legal action or suit which relates in any way to a subcontract with a subcontractor or which may affect the performance of the Contractor's duties under a contract. Any subcontract shall not relieve the Contractor in any way of any responsibility, duty and/or obligation of a contract.

If at any time during performance under the contract the total compensation to a subcontractor exceeds or is expected to exceed REDACTED that subcontractor shall be required to submit and certify a Vendor Responsibility Questionnaire.

### **PRICE:**

Bidders must submit pricing using the Bid Cost Sheet (see page 27). Bidders are required to submit pricing for all line items to be considered for contract award. Any alteration to the Bid Cost Sheet may result in the disqualification of bid.

DOCCS conducts approximately 340,000 scans (84,165 x 4 + 3,340) for illicit substances using 5 reagent tests at 52 locations annually. A normal scan consists of THC (50ng/ml cutoff), Opiate (300 ng/ml cutoff), Buprenorphine (5 ng/ml cutoff), and Synthetic Cannabinoids XLR-11/UR-144 (10ng/ml cutoff). Additionally, work release facilities conduct scans for the use of ethyl alcohol (3,340), which is included in the above number of tests and scans. These reagents will be worth 88% of the total weighted bid price.

There are 27 Other Reagents (totaling 14,850 tests) listed on the bid cost sheet that DOCCS may require testing during the contract period. Please note, DOCCS is not currently testing for all of the substances listed. However, based on possible changes in the drug world, should the need arise, DOCCS asks bidders



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for pricing on other known reagents for future testing ability." These other reagents will only be worth 2% of the total weighted bid price-

Bidder's bid price shall be inclusive of the following: licenses, insurance, administrative, profit, all labor and equipment costs, reporting or other requirements, all overhead costs, and other ancillary costs. Details of service not explicitly stated in these specifications, but necessarily attendant thereto are deemed to be understood by the Bidder and included herein.

For evaluation purposes, the total cost of training will be worth 10% of the total weighted bid price.

#### **METHOD OF AWARD:**

Award shall be made by Grand Total Weighted Bid Price to the **lowest responsive and responsible bidder** as calculated on the Bid Cost Sheet.

**Upon award, Contractor will have until 11/30/18 to install equipment and complete training.**

#### **MINOR DEVIATIONS (s)/MINOR TECHNICALITY:**

DOCCS reserves the right to have the flexibility to consider bids with minor deviations or technicalities and to waive minor deviations or technicalities that may be consistent with the intent and scope of the solicitation. The flexibility may permit a reasonable outcome in cases where the results of a fair, competitive process are clear but the award of a contract is threatened due to a minor technicality or a minor deviation.

#### **"OR EQUAL":**

The State reserves the right to determine if a product/service is 'equal' to bid specifications. Bids with minor deviations or technicalities may be waived if consistent with the intent and scope of the solicitation. The flexibility may permit a reasonable outcome in cases where the results of a fair, competitive process are clear but the award of a contract is threatened due to a minor technicality or a minor deviation.

#### **CONTRACT PAYMENTS:**

Contractor shall provide complete and accurate billing invoices to the Agency in order to receive payment. Billing invoices submitted to the Agency must contain all information and supporting documentation required by the Contract, the Agency and the State Comptroller. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electric payments. Authorization forms are available at the State Comptroller's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), by email at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us), or by telephone at (518) 474-4032. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

#### **BILLING:**

Invoices should be sent to the ordering Correctional Facility, address, attention: Accounts Payable. Payment will be based on an invoice used in the supplier's normal course of business. Invoices must contain the Contract No., description of materials, quantity, unit and price per unit as well as the Federal Identification Number and New York State Vendor ID.

If unable to email invoices, mail them to the Business Services Center address at:

Dept. of Corrections and Community Supervision  
Unit ID: 3250226  
c/o OGS BSC Accounts Payable  
Building 5, 5th floor  
1220 Washington Ave  
Albany, NY 12226-1900

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Invoices should be sent to the Office of General Services' (OGS) Business Services Center (BSC) within ten (10) business days after the first day of the following month.

### **INTEREST:**

Interest on late payment is governed by State Finance Law, Section 179-M.

### **CONTRACT PERIOD:**

The contract awarded as a result of this IFB shall commence on September 1, 2018, or upon approval of the Office of the State Comptroller (OSC), whichever date is later, and will continue for five (5) years from the commencement date.

### **REJECTION:**

The State reserves the right to reject an obviously unbalanced bid or to make "NO AWARD" on individual listings or sub-items if individual bid prices are deemed to be unbalanced or excessive or if an error in the solicitation becomes evident. In such case, ranking and evaluation of bids may be made on remaining items. Award would be made on the remaining items. The determination of an unbalanced bid shall be at the sole discretion of the State. Options contained in this paragraph shall also be at the State's sole discretion.

### **CANCELLATION FOR CAUSE AND CONVENIENCE:**

This agreement may be terminated by mutual agreement upon thirty (30) days written notice. Also, DOCCS – CPU may terminate the agreement immediately for cause, upon written notice, if the contractor fails to comply with the terms and conditions of this agreement and/or with any laws, rules, regulations, policies or procedures of the State of New York affecting this agreement.

The State of New York retains the right to cancel this contract, in whole or in part without reason provided that the Contractor is given at least thirty (30) day notice of its intent to cancel. This provision should not be understood as waiving the State's right to terminate the contract for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision. Any such cancellation shall have no effect on existing Agency agreements, which are subject to the same 30-day discretionary cancellation or cancellation for cause by the respective user Agencies.

### **CONTRACTOR INSURANCE REQUIREMENTS:**

Prior to the commencement of the work to be performed by the Contractor hereunder, the Contractor shall file with The People of the State of New York, DOCCS, Certificates of Insurance (hereinafter referred to as "Certificates"), evidencing compliance with all requirements. Such Certificates shall be of a form and substance acceptable to DOCCS.

Certificate acceptance and/or approval by DOCCS does not and shall not be construed to relieve Contractor of any obligations, responsibilities or liabilities under the Contract.

Contractors shall be required to procure, at their sole cost and expense, and shall maintain in force at all times during the term of any Contract resulting from this Solicitation, policies of insurance as required by this Section. All insurance required by this Section shall be written by companies that have an A.M. Best Company rating of "A-," Class "VII" or better. In addition, companies writing insurance intended to comply with the requirements of this Section should be licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York. DOCCS may, in its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documents are accompanied by a completed Excess Lines Association of New York (ELANY) affidavit or other documents demonstrating the company's strong financial rating. If, during the term of a policy, the carrier's A.M. Best rating falls below "A-," Class "VII," the insurance must be replaced, on or before the renewal date of the policy, with insurance that meets the requirements above.

Bidders and Contractors shall deliver to DOCCS evidence of the insurance required by this Solicitation and any Contract resulting from this Solicitation in a form satisfactory to DOCCS. Policies must be written in accordance with the requirements of the paragraphs below, as applicable. While acceptance of insurance documentation shall not be unreasonably withheld, conditioned or delayed, acceptance and/or approval by DOCCS does not, and shall not be construed to, relieve Bidders or Contractors of any obligations, responsibilities or liabilities under this Solicitation or any Contract resulting from this Solicitation.



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The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the term of the Contract.

A. **General Conditions Applicable to Insurance.** All policies of insurance required by this Solicitation or any Contract resulting from this Solicitation shall comply with the following requirements:

1. **Coverage Types and Policy Limits.** The types of coverage and policy limits required from Bidders and Contractors are specified in Paragraph B Insurance Requirements below.
2. **Policy Forms.** Except as otherwise specifically provided herein, or agreed to in the Contract resulting from this Solicitation, all policies of insurance required by this Section shall be written on an occurrence basis.

### Certificates of Insurance/Notices

Bidders and Contractors shall provide DOCCS with a Certificate or Certificates of Insurance, in a form satisfactory to DOCCS as detailed below, and pursuant to the timelines set forth in Section B below. Certificates shall reference the Solicitation or award number and shall name The New York State Department of Corrections and Community Supervision, Harriman Campus, Division of Support Operations – Contract Procurement Unit, 550 Broadway, Menands, NY 12204, as the certificate holder.

### Certificates of Insurance shall

- Be in the form acceptable to DOCCS and in accordance with the New York State Insurance Law;
- Disclose any deductible, self-insured retention, aggregate limit or exclusion to the policy that materially changes the coverage required by this Solicitation or any Contract resulting from this Solicitation;
- Refer to this Solicitation and any Contract resulting from this Solicitation by award number;
- Be signed by an authorized representative of the referenced insurance carriers; and
- Contain the following language in the Description of Operations / Locations / Vehicles section: Additional insured protection afforded is on a primary and non-contributory basis. A waiver of subrogation is granted in favor of the additional insureds.

Only original documents (certificates of insurance and any endorsements and other attachments) or electronic versions of the same that can be directly traced back to the insurer, agent or broker via e-mail distribution or similar means will be accepted.

DOCCS generally requires Contractors to submit only certificates of insurance and additional insured endorsements, although DOCCS reserves the right to request other proof of insurance. Contractors should refrain from submitting entire insurance policies, unless specifically requested by DOCCS. If an entire insurance policy is submitted but not requested, DOCCS shall not be obligated to review and shall not be chargeable with knowledge of its contents. In addition, submission of an entire insurance policy not requested by DOCCS does not constitute proof of compliance with the insurance requirements and does not discharge Contractors from submitting the requested insurance documentation.

3. **Primary Coverage.** All liability insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to the People of the State of New York, the New York State Department of Corrections and Community Supervision, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. Any other insurance maintained by the People of the State of New York, the New York State Department of Corrections and Community Supervision, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees shall be excess of all applicable Contractor's insurance, including any umbrella and/or excess policies, and shall not contribute with the Bidder/Contractor's insurance.
4. **Breach for Lack of Proof of Coverage.** The failure to comply with the requirements of this Section at any time during the term of the Contract shall be considered a breach of the terms of the Contract and shall allow the People of the State of New York, the New York State Department of Corrections and Community Supervision, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees to avail themselves of all remedies available under the Contract or at law or in equity.



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5. **Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate the applicable deductibles/self-insured retentions for each listed policy. Deductibles or self-insured retentions above **REDACTED** are subject to approval from DOCCS. Such approval shall not be unreasonably withheld, conditioned or delayed. Bidders and Contractors shall be solely responsible for all claim expenses and loss payments within the deductibles or self-insured retentions. If the Bidder/Contractor is providing the required insurance through self-insurance, evidence of the financial capacity to support the self-insurance program along with a description of that program, including, but not limited to, information regarding the use of a third-party administrator shall be provided upon request. If the Contractor is unable to meet their obligation under any deductible, self-insured retention or self-insurance, neither the People of the State of New York nor DOCCS will be obligated to drop down to cover those amounts.
6. **Subcontractors.** Prior to the commencement of any work by a Subcontractor, the Contractor shall require such Subcontractor to procure policies of insurance as required by this Section and maintain the same in force during the term of any work performed by that Subcontractor.
7. **Waiver of Subrogation.** For all liability policies and the workers' compensation insurance required below, the Bidder/Contractor shall cause to be included in its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against The People of the State of New York, the New York State Department of Corrections and Community Supervision, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if the Contractor waives or has waived before the casualty, the right of recovery against The People of the State of New York, the New York State Department of Corrections and Community Supervision, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees or (ii) any other form of permission for the release of The People of the State of New York, the New York State Department of Corrections and Community Supervision, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. A Waiver of Subrogation Endorsement shall be provided upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.
8. **Additional Insured.** The Contractor shall cause to be included in each of the liability policies required below, ISO form CG 20 10 11 85 (or a form or forms that provide equivalent coverage, such as the combination of CG 20 10 04 13 and CG 20 37 04 13) and form CA 20 48 10 13 (or a form or forms that provide equivalent coverage), naming as additional insureds: The People of the State of New York, the New York State Department of Corrections and Community Supervision, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. An Additional Insured Endorsement evidencing such coverage shall be provided to DOCCS pursuant to the timelines set forth in Section B below. A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. For Contractors who are self-insured, the Contractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the Contractor would have been required to pursuant to this Section had the Contractor obtained such insurance policies.
9. **Excess/Umbrella Liability Policies.** Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies; however, a minimum of one million dollars **REDACTED** must be primary coverage for general liability and auto liability. All Contractor's applicable insurance policies, including umbrella and excess insurance, will be primary to any insurance, self-insurance, deductible or self-insured retention of The People of the State of New York, the New York State Department of Corrections and Community Supervision, or any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of underlying insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage and limits of insurance), including proof that the excess/umbrella insurance follows form must be provided upon request.
10. **Notice of Cancellation or Non-Renewal.** Policies shall be written so as to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five (5) business days of receipt of any notice of cancellation or non-renewal of insurance, the Contractor shall provide DOCCS with a copy of any such notice received from an insurer together with proof of replacement coverage that complies with the insurance requirements of this Solicitation and any Contract resulting from this Solicitation.



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11. **Policy Renewal/Expiration** Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in this Solicitation and any Contract resulting from this Solicitation shall be delivered to DOCCS. If, at any time during the term of any Contract resulting from this Solicitation, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Solicitation or any Contract resulting from this Solicitation, or proof thereof is not provided to DOCCS, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by DOCCS.
12. **Deadlines for Providing Insurance Documents after Renewal or Upon Request.** As set forth herein, certain insurance documents must be provided to the DOCCS Procurement Services contact identified in the Contract Award Notice after renewal or upon request. This requirement means that the Contractor shall provide the applicable insurance document to DOCCS as soon as possible but in no event later than the following time periods:
- For certificates of insurance: 5 business days
  - For information on self-insurance or self-retention programs: 15 calendar days
  - For other requested documentation evidencing coverage: 15 calendar days
  - For additional insured and waiver of subrogation endorsements: 30 calendar days

Notwithstanding the foregoing, if the Contractor shall have promptly requested the insurance documents from its broker or insurer and shall have thereafter diligently taken all steps necessary to obtain such documents from its insurer and submit them to DOCCS, DOCCS shall extend the time period for a reasonable period under the circumstances, but in no event shall the extension exceed 30 calendar days.

### **B. Insurance Requirements**

Bidders and Contractors shall obtain and maintain in full force and effect, throughout the term of any Contract resulting from this Solicitation, at their own expense, the following insurance with limits not less than those described below and as required by the terms of any Contract resulting from this Solicitation, or as required by law, whichever is greater:

Insurance Type		Proof of Coverage is Due
Commercial General Liability	[Not less than REDACTED each occurrence]	Upon notice from DOCCS of tentative award
General Aggregate	REDACTED	
Products – Completed Operations Aggregate	REDACTED	
Personal and Advertising Injury	REDACTED	
Medical Expenses Limit	REDACTED	
Business Automobile Liability Insurance	[Not less than REDACTED each occurrence]	
Workers' Compensation		
Disability Benefits		

1. **Commercial General Liability Insurance:** Such liability shall be written on the current edition of ISO occurrence form CG 00 01, or a substitute form providing equivalent coverage and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) [and explosion, collapse & underground coverage].

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate
- Products – Completed Operations Aggregate
- Personal and Advertising Injury
- Each Occurrence



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Coverage shall include, but not be limited to, the following:

- Premises liability;
- Independent contractors;
- Blanket contractual liability, including tort liability of another assumed in a contract;
- Defense and/or indemnification obligations, including obligations assumed under the Contract;
- Cross liability for additional insureds;
- Products/completed operations for a term of no less than three [1-3] years, commencing upon acceptance of the work, as required by the Contract;
- [Explosion, collapse and underground hazards; and
- Contractor means and methods].

2. **Business Automobile Liability Insurance:** Such insurance shall cover liability arising out of any automobile used in connection with performance under the Contract, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates.

In the event that the Contractor does not own, lease or hire any automobiles used in connection with performance under the Contract, the Contractor does not need to obtain Business Automobile Liability Insurance, but must attest to the fact that the Contractor does not own, lease or hire any automobiles used in connection with performance under the Contract on a form provided by DOCCS. If, however, during the term of the Contract, the Contractor acquires, leases or hires any automobiles that will be used in connection with performance under the Contract, the Contractor must obtain Business Automobile Liability Insurance that meets all of the requirements of this section and provide proof of such coverage to DOCCS in accordance with the insurance requirements of any Contract resulting from this Solicitation.

In the event that the Contractor does not own or lease any automobiles used in connection with performance under the Contract, but the Contractor does subcontract, hire and/or utilize non-owned automobiles in connection with performance under the Contract, the Contractor, subcontractor or owner of the automobile(s) must: (i) obtain Business Automobile Liability Insurance as required by this Solicitation or any Contract resulting from this Solicitation, except that such insurance may be limited to liability arising out of hired and/or non-owned automobiles, as applicable; and (ii) attest to the fact that the Contractor does not own or lease any automobiles used in connection with performance under the Contract, on a form provided by DOCCS. If, however, during the term of the Contract, the Contractor acquires or leases any automobiles that will be used in connection with performance under the Contract, the Contractor must obtain Business Automobile Liability Insurance that meets all of the requirements of this Section and provide proof of such coverage to DOCCS in accordance with the insurance requirements of any Contract resulting from this Solicitation.

### 3. **Workers' Compensation Insurance and Disability Benefits Requirements**

Sections 57 and 220 of the New York State Workers' Compensation Law require the heads of all municipal and state entities to ensure that businesses applying for contracts have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals. **Failure to provide proper proof of such coverage or a legal exemption will result in a rejection of a Bid or any contract renewal. A Bidder will not be awarded a Contract unless proof of workers' compensation and disability insurance is provided to DOCCS.** Proof of workers' compensation and disability benefits coverage, or proof of exemption must be submitted to DOCCS at the time of Bid submission, policy renewal, contract renewal, and upon request. Proof of compliance must be submitted on one of the following forms designated by the New York State Workers' Compensation Board. **An ACORD form is not acceptable proof of New York State workers' compensation or disability benefits insurance coverage.**

Proof of Compliance with Workers' Compensation Coverage Requirements:

- Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the Workers' Compensation Board's website ([www.wcb.ny.gov](http://www.wcb.ny.gov));

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- Form C-105.2 (9/07), *Certificate of Workers' Compensation Insurance*, sent to DOCCS by the Contractor's insurance carrier upon request, or if coverage is provided by the New York State Insurance Fund, they will provide Form U-26.3 to DOCCS upon request from the Contractor; or
- Form SI-12, *Certificate of Workers' Compensation Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office, or
- Form GSI-105.2, *Certificate of Participation in Workers' Compensation Group Self-Insurance*, available from the Contractor's Group Self-Insurance Administrator.

### Proof of Compliance with Disability Benefits Coverage Requirements:

- Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the Workers' Compensation Board's website ([www.wcb.ny.gov](http://www.wcb.ny.gov));
- Form DB-120.1, *Certificate of Disability Benefits Insurance*, sent to DOCCS by the Contractor's insurance carrier upon request; or
- Form DB-155, *Certificate of Disability Benefits Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office.

An instruction manual clarifying the New York State Workers' Compensation Law requirements is available for download at the New York State Workers' Compensation Board's website, <http://www.wcb.ny.gov>. Once on the site, click on the Employers/Businesses tab and then click on Employers' Handbook.

## **INDEMNIFICATION:**

The Contractor shall assume all risks of liability for its performance, or that of any of its officers, employees, subcontractors or agents, of any contract resulting from this solicitation and shall be solely responsible and liable for all liabilities, losses, damages, costs or expenses, including attorney's fees, arising from any claim, action or proceeding relating to or in any way connected with the performance of this Agreement and covenants and agrees to defend, indemnify and hold harmless the State of New York, its agents, officers and employees, from any and all claims, suits, causes of action and losses of whatever kind and nature, arising out of or in connection with its performance of any contract resulting from this solicitation, including negligence, active or passive or improper conduct of the Contractor, its officers, agents, subcontractors or employees, or the failure by the Contractor, its officers, agents, subcontractors or employees to perform any obligations or commitments to the State or third parties arising out of or resulting from any contract resulting from this solicitation. Such indemnity shall not be limited to the insurance coverage herein prescribed.

## **REFERENCES:**

As per the "Vendor Responsibility Disclosure" clause, bidders may be required to provide references of the bidder's largest customers. References shall be commercial or governmental accounts, and should demonstrate the ability of the vendor to perform jobs similar in scope to the size, nature and complexity of the outlined bid. The references shall include the:

- Name, address, contact person, telephone number, fax number, and number of years bidder has serviced the referenced account;
- Volume of business performed within the past three years for each referenced account.

## **FINANCIAL STABILITY:**

As per the "Vendor Responsibility Disclosure" clause, bidder may be required to document its ability to service a contract with dollar sales volume similar to scope of this bid through submission of financial statements documenting past sales history. The bidder must be financially stable and able to substantiate the financial statements of its company. In addition to sales history, current financial statements may be requested and must be provided within five business days. The state reserves the right to request additional documentation from the bidder and to request reports on financial stability from independent financial rating services. The state reserves the right to reject any bidder who does not demonstrate financial stability sufficient for the scope of this bid.



## GENERAL INFORMATION

### **GENERAL REQUIREMENTS:**

The Bidder agrees to

1. Adhere to all State and Federal laws and regulations in connection with the contract; and,
2. Notify DOCCS of any changes in the legal status or principal ownership of the firm, forty-five (45) days in advance of said change.

The Bidder agrees that

3. In any contract resulting from this IFB, it shall be completely responsible for its work, including any damages or breakdowns caused by its failure to take appropriate action; and,
4. Any contract resulting from this IFB may not be assigned, transferred, conveyed or the work subcontracted without the prior written consent of the Commissioner of DOCCS.
5. For reasons of safety and public policy, in any contract resulting from this IFB, the use of illegal drugs and/or alcoholic beverages by the Contractor or its personnel shall not be permitted while performing any phase of the work herein specified.
6. For purposes of any contract resulting from this IFB, the State will not be liable for any expense incurred by the Contractor for any parking fees or as a consequence of any traffic infraction or parking violations attributable to employees of the Contractor.
7. The Commissioner's interpretation of specifications shall be final and binding upon the Contractor.
8. The Commissioner of DOCCS will make no allowance or concession to the Bidder for any alleged misunderstanding because of quantity, quality, character, location or other conditions.
9. Should it appear that there is a real or apparent discrepancy between different sections of specifications concerning the nature, quality or extent of work to be furnished, it shall be assumed that the Bidder has based its bid on the more expensive option. Final decision will rest with the Commissioner of DOCCS.
10. Inspection – For purposes of any contract resulting from this IFB, the quality of service is subject to inspection and may be made at any reasonable time by the State of New York. Should it be found that quality of services being performed is not satisfactory and that the requirements of the specifications are not being met, the Commissioner DOCCS may terminate the contract and employ another contractor to fulfill the requirements of the contract. The existing Contractor shall be liable to the State of New York for costs incurred on account thereof.
11. Stop Work Order - The Commissioner of DOCCS reserves the right to stop the work covered by this IFB and any contract(s) resulting therefrom at any time that it is deemed the successful Bidder is unable or incapable of performing the work to the state's satisfaction. In the event of such stopping, DOCCS shall have the right to arrange for the completion of the work in such manner as it may deem advisable and if the cost thereof exceeds the amount of the bid, the successful Bidder shall be liable to the State of New York for any such costs on account thereof. In the event that DOCCS issues a stop work order for the work as provided herein, the Contractor shall have ten (10) working days to respond thereto before any such stop work order shall become effective.

### **CONTRACT TERMS:**

1. All provisions and requirements of Appendix A Standard Clauses for New York State Contracts, which is attached hereto and forms a part hereof, will be incorporated into any contract resulting from this IFB, and will be binding upon the parties to such contract.
2. All provisions and requirements that are attached hereto and form a part hereof, will be incorporated into any contract resulting from this IFB, and will be binding upon the parties to such contract.
3. It is stipulated and agreed by the parties that the law of the State of New York shall solely and in all respects, govern with relation to any dispute, litigation, or interpretation arising out of or connected with any contract resulting from this IFB.
4. Any contract resulting from this IFB shall not be deemed executed, valid or binding unless and until approved in writing by the Attorney General and the Comptroller of the State of New York.

## GENERAL INFORMATION

### **PROCUREMENT RIGHTS:**

The State of New York reserves the rights for the following:

1. Reject any and all bids received in response to this Solicitation.
2. Disqualify a Bidder from receiving the award if the Bidder, or anyone in the Bidder's employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.
3. Correct Bidders' mathematical errors and waive or modify other minor irregularities in bids received, after prior notification to the Bidder.
4. Adjust any Bidder's expected costs of the bid price based on a determination of the evaluation committee that the selection of the said Bidder will cause the State to incur additional costs.
5. Negotiate with Bidders responding to this Solicitation within the Solicitation requirements to serve the best interests of the State.
6. Begin contract negotiations with another bidding Contractor(s) to serve the best interests of the State should DOCCS be unsuccessful negotiating a contract with the selected Contractor within 21 days of selection notification.
7. Waive any mandatory, non-material requirement not met by all Bidders.
8. Not make an award from this Solicitation or withdraw any tentative awards made as a result of this Solicitation.
9. Make an award under this Solicitation in whole or in part.
10. Make multiple contract awards pursuant to the Solicitation.
11. Have any service completed via separate competitive bid or other means, as determined to be in the best interest of the State.
12. Seek clarifications of bids.
13. Disqualify any bidder whose conduct and/or bid fails to conform to the requirements of the IFB.
14. Prior to the bid opening, amend the IFB specifications to correct errors or oversights, or to supply additional information, as it becomes available.
15. Change any of the scheduled dates stated herein with written notice to all bidders who have received this IFB.
16. If two or more offers are found to be substantially equivalent, the Commissioner of DOCCS, at his sole discretion, will determine award.

**Please Note:** The State is not liable for any costs incurred by Bidders in the preparation and production of bids or for any work performed prior to the issuance of a contract.



**NYS DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION  
IFB 2018-06 URINALYSIS ANALYZERS  
SEPTEMBER 1, 2018 – AUGUST 31, 2023**

**SCOPE OF SERVICES**

**OVERVIEW:**

DOCCS is seeking to award a contract for bench top urinalysis analyzers on a reagent rental basis that includes machines, consumables (excluding distilled/sterile water), calibrators, controls, maintenance, testimony, training, and help desk assistance. [Microgenics Corporation meets this requirement see TAB 3 MGC Scope](#)

DOCCS conducts approximately 340,000 scans (84,165 x 4 + 3,340) for illicit substances using 5 reagent tests at 52 locations annually. A normal scan consists of THC (50ng/ml cutoff), Opiate (300 ng/ml cutoff), Buprenorphine (5 ng/ml cutoff), and Synthetic Cannabinoids XLR-11/UR-144 (10ng/ml cutoff). Additionally, work release facilities conduct scans for the use of ethyl alcohol (3,340), which is included in the above number of tests and scans. For evaluation purposes, the total cost of these tests will represent 88% of the weighted bid price.

[Microgenics Corporation meets this requirement see TAB 3 MGC Scope](#)

There are 27 Other Reagents (totaling 14,850 tests) listed on the bid cost sheet that DOCCS may require testing during the contract period. Please note, DOCCS is not currently testing for all of the substances listed. However, based on possible changes in the drug world, should the need arise, DOCCS asks bidders for pricing on other known reagents for future testing ability." For evaluation purposes, the total cost of these tests will represent 2% of the weighted price. [Microgenics Corporation meets this requirement see TAB 3 MGC Scope](#)

For evaluation purposes, the total cost of training will be worth 10% of the total weighted bid price.

**DESCRIPTION OF SYSTEM FUNCTIONALITY:** Documentation should be provided that is descriptive of the functions supported by the system. Existing product literature and prepared marketing materials may be included; however, this information is less useful than a more detailed user and technical document. Please include information on the following:

[Microgenics Corporation meets this requirement see TAB 3 MGC Scope](#)

**PRODUCT SPECIFICATIONS:**

**Hardware:**

1. Analyzers must be new and not refurbished.
2. Must provide 1 analyzer machine to each correctional facility (see Attachment A - Correctional Facilities Map & Locations, excluding the following correctional facilities: Taconic and Moriah).
3. Must print a daily sheet of all individuals tested with results, as well as the ability to print individual results.
4. Machine must be able to operate independent of internet connection, the ability to connect should be present for possible future use.
5. Installation shall be conducted by the company at a date and time requested by DOCCS (at least 1 week notice).
6. Provide timeframe for installation of equipment (as mutually agreed upon schedule between DOCCS and Awardee).
7. Provide delivery time after the order of equipment and reagents/consumables.

[Microgenics Corporation meets All hardware requirements listed above \(1 thru 7\) see TAB 3 MGC Scope](#)

**Consumables:**

Contractor will provide all consumables relating to urinalysis testing conducted with the exception of distilled water. Consumables must be received by the ordering Correctional Facility within 5 business days of an official request. Please note: there will be no shipping costs associated for orders of consumables and are to be shipped F.O.B. destination. In addition, the Contractor will be required to develop a method for correctional facilities to order consumables to be approved by DOCCS. Contractor must designate someone in their organization to be DOCCS' official contact for consumables.

[Microgenics Corporation meets this requirement see TAB 3 MGC Scope](#)

**Training:**

1. Initial onsite training for a maximum of 5 staff members shall be conducted by the awarded Contractor at each of DOCCS 52 facilities. The training will be worth 10% of the total weighted score.

[Microgenics Corporation meets this requirement see TAB 3 MGC Scope](#)



2. In addition, a mandatory Master trainer class will be conducted by the Contractor to allow DOCCS to train and certify new testers. Certificates will be provided by the Contractor. On-site master trainer classes will be conducted at the request of DOCCS but not more than one (1) time annually. This will occur in each of 9 DOCCS regions (HUBs) at a DOCCS location and will include no more than 36 individuals in total (approximately 4 per HUB). The training will encompass new drug trends, testifying for administrative hearings, common issues with the machine, proper procedures for training new testers, common issues with training new testers, minor preventative maintenance.

The training should also include peripherals and training materials for both the master trainer and new tester (PowerPoint/manual, tests, training aids, etc.) A method for the supply and updating of the curriculum as needed by the manufacturer should be available.

A minimum should be set by the manufacturer to determine tester proficiency. All training must occur on site as the restrictions to internet access is limited for many DOCCS employees. A state map of DOCCS facilities and HUBS is attached. The training may be conducted at any facility within a specific HUB based on availability of urinalysis room space and need.

For evaluation purposes, the total cost of training (total for items 1. and 2a-b.) will be worth 10% of the total weighted bid price. Please note: Vendor will only be paid for actual training events provided. DOCCS reserves the right to increase or decrease training sessions based on actual staff training needs; additional training classes will be paid based on the vendor's bid rate for the location where the additional training will be held.

**Please note: Training cost shall be invoiced separately from testing costs.**

#### **Support and Maintenance:**

1. Operators manual must be provided at a minimum of English and Spanish. Additional, manuals in other languages must be available upon request free of charge.
2. The Department requires a maintenance agreement for the life of agreement during business hours for service to the Urinalysis Analyzer as requested. This maintenance agreement will become effective upon expiration of the initial warranty. **Business Hours: 8:00 am – 5:00 pm, Monday – Friday (no weekends or state holidays)** The following are New York State designated holidays:

New Year's Day	Labor Day
Martin Luther King, Jr. Day	Columbus Day
Lincoln's Birthday	Election Day
Washington's Birthday	Veteran's Day
Memorial Day	Thanksgiving
Independence Day	Christmas

3. Must provide unlimited 24/7 telephone support (for technical support and troubleshooting)
4. Must provide preventive maintenance visits (at least 2 visits annually)
5. Must provide 24-hour response time (when on-site service is required/requested)
6. Must provide and cover, all parts, labor (including travel), and costs associated with repair and maintenance of the machine.
7. If replacement equipment is required due to failure, it must be received within 48 hours.
8. If replacement software is required due to failure, it must be received within 24 hours.
9. Helpdesk Operations
10. User feedback procedures
11. 24/7 and 365 support procedures
12. Warranty, returns and exchanges

**TESTIMONY:**

Testimony at DOCCS administrative hearings is required by the Contractor during normal business hours, telephonic testimony will be required on an as needed. Testimony may be, but is not limited to, machine operation, calibration, maintenance, procedures, and cross-reactivity. In the event of litigation, DOCCS may require the manufacturer provide an expert in the field of urinalysis drug testing to assist the New York State Attorney General's Office or DOCCS Counsel's Office in defending issues that may arise from the urinalysis testing of inmates.

Microgenics Corporation meets this requirement see TAB 3 MGC Scope

**NYS DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION**  
**IFB 2018-06 URINALYSIS ANALYZERS**  
**BID COST SHEET**  
**5-15-18**

DOCCS is seeking to award a contract for bench top urinalysis analyzers on a reagent rental basis that includes machines, consumables (excluding distilled/sterile water), calibrators, controls, maintenance, testimony, training, and help desk assistance. An award will be made to the responsive, responsible bidder offering the lowest grand total weighted bid price for testing requested in this IFB.

Reagents	Estimated Annual Test Quantity (A)	Price per test (B)	Kit size	Kit Yield	Price per Kit	Total Cost (A x B)
Buprenorphine	84,165 tests	0.92	54ml	399	<b>REDACTED</b>	
Cannabinoids (THC)	84,165 tests	0.92	54ml	474		
Opiates	84,165 tests	0.92	54ml	678		
Synthetic Cannabinoids-2	84,165 tests	0.92	54ml	639		
Ethyl Ethanol	3,340 tests	0.92	54ml	678		
Total	340,000 tests	Total Cost of Above				(C)
*Other Reagents	*Estimated Annual Test Quantity (A)	Price per test (B)	Kit size	Kit Yield	Price per Kit	Total Cost (A x B)
6-AM	550 tests	0.92	54ml	474	<b>REDACTED</b>	
Amphetamine	550 tests	0.92	54ml	678		
Barbiturates	550 tests	0.92	54ml	678		
Benzodiazepines	550 tests	0.92	54ml	678		
Benzoylcegonine (cocaine metabolite)	550 tests	0.92	54ml	678		
Creatinine	550 tests	0.92	108ml	612		
Ecstasy	550 tests	0.92	54ml	678		
EDDP	550 tests	0.92	54ml	678		
Etg	550 tests	0.92	54ml	678		
K2 (Synthetic Cannabinoids-1)	550 tests	0.92	54ml	639		
K2 (Synthetic Cannabinoids-3)	550 tests	0.92	54ml	639		
Ketamine	550 tests	1.31	25ml	275		
Meperidine	550 tests	1.08	25ml	330		
Methadone	550 tests	0.92	54ml	678		



*Other Reagents	*Estimated Annual Test Quantity (A)	Price per test (B)	Kit size	Kit Yield	Price per Kit	Total Cost (A x B)
Methamphetamine	550 tests	1.55	25ml	330	<b>REDACTED</b>	
Methaqualone	550 tests	0.92	100ml	1320		
Nitrite	550 tests	0.92	108ml	564		
Opiates 2k	550 tests	0.92	54ml	678		
Oxidants	550 tests	0.92	108ml	564		
Oxycodone	550 tests	0.92	54ml	678		
pH	550 tests	0.92	108ml	564		
Phencyclidine (PCP)	550 tests	0.92	54ml	678		
Propoxyphene	550 tests	0.92	54ml	678		
Specific gravity	550 tests	0.92	108ml	564		
Tramadol	550 tests	1.01	25ml	330		
Tricyclic antidepressants	550 tests	1.00	25ml	122		
Total	14,300 tests	Total Cost of Above				(D)

\*Test quantities are for evaluation purposes only in determining the lowest weighted bid price. The test quantities can increase or decrease during the contract period.

For evaluation purposes, a weighted bid price of eighty-eight percent (88%) of the cost for the 5 reagents listed above will be used, and a weighted bid price of 2% of the overall cost will be attributed to the other listed reagents. \* The price requested for Other Reagents are for the purpose of establishing the price per test should the need to test arise during the contract period.

Bidders must submit pricing per test for the reagents listed to be considered for award. Any alteration to the Bid Cost Sheet may result in the disqualification of bid.

### Training

1. Initial on-site training for a maximum of 5 DOCCS staff members per facility shall be conducted by the awarded Contractor at each of DOCCS 52 facilities (Attachment A)

Total cost: **REDACTED PI** (1.)



## 2. On-site master training – HUB Training:

HUBs	Locations	Employees Trained	Annual Training Event	Bid Price per training section
Clinton	Clinton CF	4	1	REDACTED
Elmira	Five Points CF	4	1	
Great Meadow	Great Meadow CF	4	1	
Green Haven	Fishkill CF	4	1	
Sullivan	Eastern CF	4	1	
Oneida	Mid-State CF	4	1	
New York City	Queensboro CF	4	1	
Watertown	Watertown CF	4	1	
Wende	Wende CF	4	1	

a) Total Annual Cost Per Year (9 Sessions) =

\$

REDACTED

b) Option: Additional Training Events (2 / Year x Average of 9 events in a) above) \$

Total cost (a)+(b): REDACTED PII (2.)

For evaluation purposes, DOCCS will use the average of 9 events for additional training classes per year. DOCCS reserves the right to increase or decrease training sessions based on actual staff training needs; vendor will be paid for the vendor's bid rate for the location where the additional training will be held.

For evaluation purposes, the total cost of training (total for items 1. and 2a-b.) will be worth 10% of the total weighted bid price.

Reagents Total Weighted Cost: (C) REDACTED x 88% = REDACTED

Other Reagents Total Weighted Cost: (D) REDACTED x 2% = REDACTED

Training Total Weighted Cost: (1+2) REDACTED x 10% = REDACTED

Grand Total: = \$ REDACTED

SIGNATURE: Carol BowersPRINTED NAME: Carol Bowers

RETURN THIS PAGE AS PART OF THE BID

PLEASE USE BLACK INK OR TYPEWRITER WHEN PREPARING YOUR BID. BE SURE YOU HAVE INSERTED YOUR COMPANY'S NAME IN THE BOX

⇒ ⇒ ⇒ ⇒ ⇒ ⇒

Bidder

*Microgenics Corporation*

**NOTES TO BIDDERS:** FAILURE TO ANSWER THE QUESTIONS WILL DELAY THE EVALUATION OF YOUR BID AND MAY RESULT IN REJECTION OF YOUR BID.

- Are prices quoted the same as or lower than those quoted other corporations, institutions and government agencies (including GSA/VA contracts) on similar products, quantities, terms, and conditions? See "Best Pricing Offer" in Appendix B, General Specifications.  
If "NO", please explain on a separate sheet.

  X   YES        NO

- Person or persons to contact for expediting New York State contract orders:

Name:

Brenda Collum

Title:

Sales Representative

Telephone Number:

(516) 441-6302

Toll Free Telephone Number:

(800) 232-3342 opt 2 opt 3

Fax Number:

( )

Toll Free Fax Number:

( )

E-Mail Address:

techservice.mgcAthermofisher.com

- Person or persons to contact in the event of an emergency occurring after business hours or on weekend/holidays:

State Normal Business Hours (Specify M-F, Sat, Sun):

Name:

Technical Support Team

Title:

Telephone Number:

(800) 232-3342 opt 2 opt 3

Fax Number:

( )

Pager Number:

( )

Cellular Telephone Number:

( )

E-Mail Address:

Techservice.mgcAthermofisher.com

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⇒ ⇒ ⇒ ⇒ ⇒ ⇒

Bidder

*Microgenics Corporation*

**BIDDERS PLEASE ANSWER THE FOLLOWING  
QUESTIONS:**

1. Are you a New York State resident business?
2. Total number of people employed by your business:
3. Total number of people employed by your business in  
New York State:
4. Is your business independently owned and operated?

\_\_\_\_\_ YES ☒ NO

500

0

☒ YES \_\_\_\_\_ NO

**5. BIDDER'S PRINCIPAL PLACE OF BUSINESS\*:**

State of California

\*"Principal Place of Business" is the location of the primary  
control, direction and management of the enterprise.

**RETURN THIS PAGE AS PART OF THE BID**



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⇒ ⇒ ⇒ ⇒ ⇒ ⇒

Bidder

*Microgenics Corporation*

#### 6. ENCOURAGING USE OF NEW YORK STATE BUSINESSES IN CONTRACT PERFORMANCE

New York State businesses have a substantial presence in State Contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, Bidders/Proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the Contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Bidders/Proposers need to be aware that all authorized users of this Contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, Bidders/Proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State Contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the Contractor and its New York State business partners. New York State businesses will promote the Contractor's optimal performance under the Contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its Contractors. The State therefore expects Bidders/Proposers to provide maximum assistance to New York businesses in their use of the Contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

Bidders/Proposers can demonstrate their commitment to the use of New York State businesses by responding to the question below:

Will New York State Businesses be used in the performance of this Contract?

\_\_\_\_\_ YES    ☒ NO

If yes, identify New York State Business(es) that will be used:  
(Attach identifying information)

N/A

RETURN THIS PAGE AS PART OF THE BID



## Required Information and Forms

- Appendix A – Standard Clauses for New York State Contracts
- Appendix B – General Specifications (dated August 2012)
- Appendix C – Contractor Requirements for EEO and M/WBE

All bidders **must submit the following required forms with bid.** Forms are provided in this attachment unless otherwise noted:

- Bid Cost Sheet (pages 28-30)
- Non-Disclosure Form (Attachment B)
- Vendor Assurance of No Conflict of Interest or Detrimental Effect (Attachment C)
- Vendor Responsibility Questionnaire (if not completed online, see Page 13 for information and web links to complete)
- Tax and Finance Form ST-220-CA (Form ST-220-TD is filed directly with NYS Department of Tax & Finance)
- Use of Service-Disabled Veteran-Owned Business Enterprises in Contract Performance
- M/WBE and EEO Policy Statement (located in Appendix C)
- EEO Staffing Plan (Form EEO 100)

The following documentation will be required **only upon notice of tentative award:**

- Compliance with Workers' Compensation and NYS Disability Benefits Insurance Requirements (see Page 21):
  - Proof of Compliance with Workers' Compensation Coverage
  - Proof of Compliance with Disability Benefits Coverage
- Contractor Insurance Requirements (see Pages 17-22)

**NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION**  
**IFB 2018-06 URINALYSIS ANALYZERS**  
**QUESTIONS AND ANSWERS**  
**MAY 15, 2018**

1. Can you please give us a breakdown of the Thermo and Siemens bid results from 11/28/2017. All we have is the total award as listed below:

Intent to award date: 11/28/2017 Type of bid result: IFB Bid result: Vendors Microgenics Corporation- Lowest Bid **REDACTED** Siemens HealthCare **REDACTED** Alere San Diego **REDACTED** Bid results contact: Corrections and Community Supervision, NYS Dept. of Support Operations Contract Procurement Unit Marla Henriquez Contract Management Specialist 1 1220 Washington Avenue State Campus Albany, NY 12226 United States 518-436-7886 ext.3135 [doccscontracts@doccs.ny.gov](mailto:doccscontracts@doccs.ny.gov) Created by: Marla Henriquez Created date: 01/12/2018 Last edited by: Marla Henriquez Last edited date: 01/12/2018

IFB 2018-06 Urinalysis Analyzers is a re-bid and documents from IFB 2017-14 may only be released after an award is made on the re-bid.

2. On the bid cost sheet of the bid proposal, located on page 28-29, is every reagent listed on this sheet a **MUST** criteria to enter this bid submission?

Please refer to IFB 2018-06, page 15, Price.

3. As the incumbent, will the State accept keeping the existing analyzers on premise in lieu of new equipment as the IFB states as a requirement? Retaining the existing equipment will provide the most cost effective solution, in addition to minimizing the challenges, disruption, and training required to implement new platforms in each facility. The existing analyzers were new on initial installation, have been maintained by Siemens for the duration of use in adherence to all manufacturer guidelines, and are considered to be in like-new condition.

Please refer to IFB 2018-06, Product Specifications, page 25.

4. Training Section of the IFB 2018-06 – Does the training need to be performed by a Technical Application Specialist or Certified Trainer that is certified by the Manufacturer?

The training should be conducted by a certified authorized representative of the manufacturer/vendor.

5. Based upon the response of the question asked regarding training - do we need to specify who is performing the training?

Yes.

6. K2 (Synthetic Cannabinoids -2) is listed twice on IFB 2018-06 Cost Sheet – 1<sup>st</sup> on the Standard Reagent Panel and again in the "Other Reagent". Is this a typographical error? If so, where should K2 be listed – in Reagents – weighted at 88% or Other Reagents – weighted at 2%?

Yes, this is a typographical error. The total cost should be on the 1<sup>st</sup> posting of K2 (Synthetic Cannabinoids -2) for the standard reagent test (weighted at 88%). The revised Bid Cost Sheet has been posted in the Contract Reporter.



7. Siemens Healthcare Diagnostics, Inc. is requesting an extension of the current bid due date of 5/23/2018. If the questions are not answered and posted in a timely fashion this could impact the response due to the impending Memorial Day holiday. Necessary resources will not be available to address questions that will be generated from the Q & A period.

No change will be made to the bid due date.

8. To ensure efficiency and eliminate errors, will "liquid ready to use" reagents be a requirement? Reagents that require reconstitution pose a higher risk. "Liquid ready to use" reagents eliminates unnecessary steps in reagent preparation.

No. This is not a requirement.

9. Do you require a Buprenorphine assay that screens for both Buprenorphine and the metabolite Nor-Buprenorphine? Buprenorphine metabolizes into Nor-Buprenorphine rather quickly. Having a screen that cross reacts with both buprenorphine and Nor-buprenorphine provides a complete picture.

No. This is not a requirement.

10. With the opioid epidemic, would you find a FDA cleared Fentanyl beneficial to your current drug testing program?

Not applicable to this bid.

Vendor Signature: Carol Bowers

Printed Name: Carol Bowers

PLEASE RETURN THIS PAGE WITH BID

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION  
IFB 2018-06 URINALYSIS ANALYZERS  
Revised - QUESTIONS AND ANSWERS  
MAY 16, 2018

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IFB 2018-06 Urinalysis Analyzers is a re-bid and documents from IFB 2017-14 may only be released after an award is made on the re-bid.

2. On the bid cost sheet of the bid proposal, located on page 28-29, is every reagent listed on this sheet a **MUST** criteria to enter this bid submission?

Please refer to IFB 2018-06, page 15, Price.

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The training should be conducted by a certified authorized representative of the manufacturer/vendor.

5. Based upon the response of the question asked regarding training - do we need to specify who is performing the training?

Yes.

6. K2 (Synthetic Cannabinoids -2) is listed twice on IFB 2018-06 Cost Sheet – 1<sup>st</sup> on the Standard Reagent Panel and again in the "Other Reagent". Is this a typographical error? If so, where should K2 be listed – in Reagents – weighted at 88% or Other Reagents – weighted at 2%?

Yes, this is a typographical error. The total cost should be on the 1<sup>st</sup> posting of K2 (Synthetic Cannabinoids -2) for the standard reagent test (weighted at 88%). The revised Bid Cost Sheet has been posted in the Contract Reporter.



7. Siemens Healthcare Diagnostics, Inc. is requesting an extension of the current bid due date of 5/23/2018. If the questions are not answered and posted in a timely fashion this could impact the response due to the impending Memorial Day holiday. Necessary resources will not be available to address questions that will be generated from the Q & A period.

No change will be made to the bid due date.

8. To ensure efficiency and eliminate errors, will "liquid ready to use" reagents be a requirement? Reagents that require reconstitution pose a higher risk. "Liquid ready to use" reagents eliminates unnecessary steps in reagent preparation.

No. This is not a requirement.

9. Do you require a Buprenorphine assay that screens for both Buprenorphine and the metabolite Nor-Buprenorphine? Buprenorphine metabolizes into Nor-Buprenorphine rather quickly. Having a screen that cross reacts with both buprenorphine and Nor-buprenorphine provides a complete picture.

No. This is not a requirement.

10. With the opioid epidemic, would you find a FDA cleared Fentanyl beneficial to your current drug testing program?

Not applicable to this bid.

11. The estimated annual test quantity throughput stated on the bid cost sheet, does it indicate the throughput for all 52 facilities i.e. 84,165 tests between all 52 sites so approximately 1618 tests per site, or is this throughput quantity per site i.e. 84,165 tests per site?



The 84,165 tests is an annual estimate between all 52 correctional facilities.

Vendor Signature: Carol Bowers

Printed Name: Carol Bowers

PLEASE RETURN THIS PAGE WITH BID

# **EXHIBIT 2**

 <b>NEW YORK STATE</b>	<b>Corrections and Community Supervision</b>  <b>DIRECTIVE</b>		<b>TITLE</b> <b>Substance Abuse Testing by Community Supervision Staff</b>		<b>NO.</b> 9432
					<b>DATE</b> 06/04/2019
<b>SUPERSEDES</b> Dir. #9432 Dtd. 09/14/2017		<b>DISTRIBUTION</b> A B	<b>PAGES</b> PAGE 1 OF 13		<b>DATE LAST REVISED</b>
<b>REFERENCES</b> (Include but are not limited to) NYS Executive Law; NYS Correction Law; MHL Article 10; ACA Expected Practice 4-APPFS-2D-04; Directives. #2944, #2945.		<b>APPROVING AUTHORITY</b> 			

- I. PURPOSE:** The Department of Corrections and Community Supervision (DOCCS) employs a substance abuse testing program as a supervision tool for staff and as a deterrent to illicit drug use and alcohol abuse by parolees. DOCCS provides staff with resources for performing initial on-site screening tests and confirmatory tests through independent laboratory analysis. Standardized testing protocols are used to identify parolees with drug and alcohol problems, to refer parolees to treatment providers, and to respond to violations of the conditions of release.

NOTE: References to “parolee” and “releasee” are intended to refer to individuals released to Community Supervision and are presently under the jurisdiction of DOCCS. References to “parolee”, for purposes of this directive, shall also include any MHL Article 10 identified respondents who are presently under the jurisdiction of DOCCS.

- II. POLICY:** The Department’s substance abuse testing policy provides for on-site drug and alcohol testing by Parole Officers and confirmation testing by an independent toxicology laboratory. On-site substance abuse tests and laboratory confirmation services are utilized to ensure effective community supervision through therapeutic intervention or delinquency action as initiated by the Parole Officer (PO) and Senior Parole Officer (SPO).

The on-site testing method provides POs with the resources to test for a wide range of substances and the ability to receive immediate test results. POs are required to conduct on-site tests at Community Supervision office locations and while in the field. The on-site testing method allows staff to immediately respond to indications of drug use and alcohol use by completing referrals to treatment programs and by providing staff with the ability to immediately modify the supervision plan in response to the presenting behavior and the needs of the parolee. POs are required to perform tests for the use of illicit substances and alcohol in order to monitor compliance with the terms and conditions of release and, where appropriate, to initiate a violation of release. Confirmation tests are performed by an independent toxicology laboratory in response to a parolee’s failure to admit use and confirmation tests are also performed in response to disputes related to the on-site test results. Confirmation tests and laboratory toxicology tests are also performed to determine usage levels in response to the limitations of an on-site testing device.

High risk parolees under high intensity supervision, those with a history of substance abuse and positive tests results, and those parolees at risk for relapse are required to be tested on a routine basis. DOCCS policy requires that a parolee must be routinely tested when the Board of Parole has imposed a mandatory substance abuse screening condition of release. The Department also performs routine testing when the assigned PO and SPO impose a substance abuse testing condition as part of the case-specific supervision plan.

A PO may also conduct a test when there is an articulable reason to believe the parolee is under the influence of drugs or alcohol, or reliable and credible information that the parolee may be under the influence exists.

The Parole Officer has the authority and an obligation to respond to the use and possession of illicit substances as required under New York State law and in accordance with DOCCS policy and procedures. POs are required to assess the totality of the circumstances and to make a determination regarding potential risk to staff safety and to the safety of the public. DOCCS testing procedures and protocols are designed and intended to promote and enhance public safety.

This operating procedure applies to all personnel, units, and offices supervised and operated by Community Supervision. All testing practices and procedures shall comply with applicable State and Federal laws and regulations, DOCCS policies and directives, ACA standards, and PREA standards.

### III. DEFINITIONS

- A. Articulable Reason: A decision to test a parolee for drugs or alcohol may be derived from the observations of a PO or other staff member concerning physical and/or emotional characteristics of the parolee (or respondent) which, based on the PO's experience, knowledge and training, are indicative of potential substance abuse. An articulable reason may also be derived based upon the parolee's criminal, parole and/or probation record, and social history.
- B. Reliable Source: A reliable source is someone who has credible information regarding the parolee or information about an incident involving the parolee, such as that received from a victim of or a witness to an incident. Law Enforcement Officers investigating the parolee or incident, or individual(s) having firsthand knowledge of the parolee or incident, are also considered reliable sources. Information received from an informant, family member, or friend may be considered a reliable source.
- C. Reasonable Suspicion: A belief that a parolee is using or has used prohibited drugs or alcohol, based on specific objective and articulated facts, and reasonable inferences, which may include the following:
  - 1. Observable information such as direct observation of the use of a substance, physical symptoms, and behavior that appears to be consistent with being under the influence of a prohibited drug or alcohol;
  - 2. Abnormal conduct or erratic behavior;
  - 3. Report of prohibited drug or alcohol use by a reliable and credible source;
  - 4. Evidence that a parolee has tampered with a specimen sample or test; or
  - 5. Evidence that a parolee is involved in the use, possession, sale, solicitation, or movement of prohibited substances or illicit drugs.
- D. Confirmation Test: A test used to verify positive results from an initial on-site screening test. The confirmation test shall be performed using the Gas Chromatography/Mass Spectrometry methodology to provide for a greater margin of accuracy.
- E. Gas Chromatography/Mass Spectrometry (GC/MS): This testing methodology is used to detect and confirm the presence of a substance or substances within a test sample or specimen based on characteristic fragmentation patterns at specific retention times, utilizing a gas chromatograph coupled to a mass spectrometer. The GC/MS testing methodology is considered the "gold standard" for forensic substance identification.



- F. Chain of Custody Specimen Collection: Chain of custody shall be defined as the control of the movement and location of a collected specimen from the time it is obtained until the time it is tested on-site or submitted to a laboratory for confirmation testing. With regard to laboratory confirmation testing, the collection and handling of the specimen must be properly performed and documented from the time the specimen is obtained from the parolee to the presentation of the results as evidence in revocation proceedings. Strict adherence to the chain of custody procedures including the identification, collection, labeling, and shipment of specimens ensures that the integrity of the collection process is preserved.

#### **IV. TESTING PROCEDURES, CONFIRMATION, AND DOCUMENTATION**

A. Reasons and Rationale for Testing Parolees

1. As a condition of parole, conditional release, post-release supervision, local conditional release, or strict and intensive supervision and treatment (SIST).
2. A special condition of release imposed by the Board of Parole, a Regional Director, Assistant Regional Director, Bureau Chief, SPO, or PO.
3. In response to a testing requirement stipulated in an order of SIST.
4. A requirement associated with referral and participation in a community-based substance abuse or alcohol treatment program.
5. A stipulation of a revocation of release or restoration to supervision decision.
6. Documented parolee history of drug and alcohol abuse.
7. Physical signs or behaviors exhibited by a parolee indicating possible usage of illicit drugs or controlled substances.
8. Direct observation of the use of illicit drugs, prohibited substances, or prohibited alcohol use by a parolee.
9. Evidence that a parolee is involved in the possession and use of prohibited substances or illicit drugs.
10. Report of prohibited drug and alcohol use by a parolee from a reliable and credible source.
11. Parolee admission or confession.
12. Routine and random testing performed as a deterrent and to identify and provide treatment to parolees involved in substance abuse or alcohol abuse.

B. Assessments (COMPAS, Case Plan, Re-Entry COMPAS, and Supervision Plan)

1. Each individual received at a DOCCS facility or beginning a period of community supervision will have an assessment completed for substance abuse risks and needs.
2. The reception COMPAS assessment shall guide the development of the individualized Re-Entry COMPAS and the Case Plan.
3. Where appropriate, inmates shall undergo clinical assessments by Offender Rehabilitation Coordinators (ORC), Supervising Offender Rehabilitation Coordinators (SORC), or other designated staff for purposes of facility-based treatment and in preparation for release to the community. The clinical assessments shall guide the development of the parolee's substance abuse treatment plan.

4. The Re-Entry COMPAS, Case Plan, and Supervision Plan shall incorporate referral information, relapse prevention education, and treatment resources.
5. When indicated by the individualized assessment, inmates shall undergo evaluation by a multidisciplinary clinical team made up of medical, mental health, and substance abuse professionals.
6. The inmate or parolee shall be involved in the development of the individualized substance abuse treatment plan.
7. The frequency of alcohol and substance abuse testing shall be based on the completed assessment of substance abuse risk and needs as well as any applicable reasons and rationales referenced in Section IV-A-1 through 12.

C. Testing Frequency (Minimum Standards)

1. If the COMPAS identified substance abuse need is “high;” the parolee is to be tested on a bi-monthly basis.
2. If the COMPAS identified substance abuse need is “medium;” the parolee is to be tested on a quarterly basis.
3. If the COMPAS identified substance abuse need is “low;” the parolee is to be tested on a semi-annual basis.

NOTE: The PO has discretion to increase the frequency of the testing consistent with any of the applicable reasons and rationales referenced in Section IV-A-1 through 12.

D. Types and Methods of Testing

1. On-site urinalysis testing kits and devices.
2. On-site oral fluid (saliva) testing kits and devices.
3. Alcohol breathalyzer.
4. Confirmation testing by a forensic toxicology laboratory.
5. Testing conducted by residential and outpatient treatment providers.

E. On-Site Testing (Initial Screening) Procedures: Specimens shall be collected from parolees in a manner consistent with DOCCS policy, the contractor’s specifications, and in consideration of the health and safety of DOCCS staff. Chain of custody procedures shall be followed in an effort to prevent contamination, substitution, and the adulteration of collected specimens. Only positive on-site screens requiring corroboration in accordance with this directive are to be sent to the forensic toxicology laboratory for confirmation. POs, SPOs, Bureau Chiefs, and other designated DOCCS staff shall adhere to the following testing procedures:

1. The Officer will inform the parolee that an on-site test will be conducted.
2. Prior to the collection of any specimen by an Officer or designated staff person, the parolee will be asked if they have used any alcohol, drugs, illegal substances, or any substances prohibited by their supervision conditions.
3. All medications currently reported shall be entered into the parolee’s Case Management System (CMS) record. The Officer shall record the name of the medication, drug type, frequency taken, dosage amount, and the last date(s) used.
4. The parolee shall be escorted to the collection and testing areas by an Officer and the Officer shall observe the parolee throughout the process.

5. Officers and staff members responsible for the collection of urine specimens shall be of the same gender as the parolee and the Officer or staff member shall be in position to verify that the specimen passes directly from the parolee into the specimen bottle and/or testing device. Observation must be direct and continuous. If the observation of the specimen is not possible (e.g., specimen collected in the field setting or same gender Officer is not available) the reason or reasons shall be documented in the CMS record of the parolee and either an unobserved urinalysis test or oral fluid test shall be performed at the discretion of the assigned Officer/staff.
6. Officers shall only test one parolee at a time and ensure that no other parolees are present in the collection room and testing areas during the process.
7. If the specimen collection and testing is being performed by a staff member other than the assigned Officer, the staff member shall ensure that they have verified the identity of the parolee.
8. While in the office or report station, the parolee shall be instructed to remove any unnecessary outer clothing, accessories, or personal items that may potentially interfere with the collection of the specimen. The parolee is to be allowed to safeguard personal belongings during collection and testing.
9. If deemed necessary, the Officer shall conduct a frisk search of the parolee to determine if adulterants, contaminants, or other substances or materials are on the parolee's person or hidden in clothing.
10. The collection room and testing areas must be routinely inspected and any potential contaminants must be removed.
11. The parolee must remain in the Officer's or designee's presence throughout the entire collection and testing processes. The parolee shall not have access to any substances, liquids, or materials that may potentially contaminate a specimen.
12. The Bureau Chief, SPO, and PO are collectively responsible for ensuring that specimen collection and testing is performed in accordance with the manufacturer's (contractor's) instructions and staff members are also responsible for conducting quality control inspections of reagents, devices, equipment, and other associated supplies.
13. Parolees shall be instructed to wash their hands after the specimen has been submitted and the specimen is to be kept in the direct view of the Officer or other designated staff member and the parolee at all times throughout the process.
14. On-site testing shall be performed in the presence of the parolee and in accordance with the manufacturer's and/or contractor's device instructions.
15. On-site test kits, devices, and collection supplies shall not be used beyond the expiration date listed on the package or test device.
16. If the on-site test results are positive, the Officer or other designated staff member shall complete [Form #CS4169A](#), "On-site Drug and Alcohol Test Record," which shall serve as the positive result record and on-site testing chain of custody document.
17. If the on-site test results are positive, the parolee shall be instructed to sign the acknowledgement section of [Form #CS4169A](#) to document the admission and type of substance(s) used. The parolee's signed admission may serve as corroborating evidence and no confirmation test is required.

- If the parolee refuses to sign the form, the Officer shall write "Refused" in the parolee signature section of the form and also sign the form as the witness. Failure to sign the form shall not invalidate the results of any tests performed.
18. A positive test result does not require a confirmation test if the parolee admits or affirms the use of drugs or alcohol by signing the acknowledgement section of [Form #CS4169A](#) or otherwise attests to the use of drugs or alcohol in writing.
  19. If the specimen tests positive and the parolee refuses to provide an admission or refuses to confess to the use of the prohibited substances, a confirmation test shall be ordered and performed by the Department's contracted toxicology laboratory. If a violation of release warrant is issued, the test results and certification provided by the contractor will be used as corroborating evidence in the revocation proceedings.
  20. [Form #CS4169A](#) shall serve as the source document for purposes of placement in the case folder and the entry of case-specific results in the CMS record of the parolee. The PO or other designated staff shall enter both positive and negative test results in the parolee's CMS record.
  21. It is the responsibility of the PO to provide the parolee with the results of the on-site drug and alcohol tests.
  22. On-site drug screening test results shall be entered in the CMS record of the parolee by close of business on the next business day following the administration of the test and in no event any later than the end of the business week (close of business on Friday).
  23. In the event that a parolee is unable to provide a specimen (urine or saliva) for testing at the collection site, the parolee shall be provided no more than two hours to comply with instruction by providing a specimen suitable for testing. The parolee shall remain under staff observation for this period. If a specimen is not provided within the two hour period, the parolee will be advised that the failure to produce a specimen constitutes a refusal to comply and may result in a recommendation of delinquency. The PO or staff member responsible for collection of the specimen shall notify the SPO of record or the on duty SPO, and a case conference shall be conducted.
  24. Incidents of deliberate tampering, intentionally contaminating a specimen or test, or the use of an adulterant shall be immediately reported to the SPO or the Bureau Chief. Such behavior on the part of the parolee shall be documented in the case folder and the CMS record of the parolee. The deliberate and intentional acts to tamper and contaminate the specimen may result in a recommendation of delinquency.
  25. If the specimen tests negative, the parolee shall be so advised. The Officer is to encourage the parolee to abstain from the use of drugs and alcohol. [Form #CS4169A](#) shall be completed and signed by both the parolee and the Officer.
  26. Urine specimen samples with negative results shall be disposed of by the parolee in a toilet under the direct observation of an Officer or designee. Specimen containers or cups, testing devices, and disposable testing accessories and supplies shall be discarded in approved biohazard receptacles under the supervision of the Officer or staff person performing the test.



F. Confirmation of On-Site (Initial Screening) Test Results and Testing Procedures:

Specimens shall be collected from parolees and submitted for testing in a manner consistent with DOCCS policy, contractor and/or vendor specifications, and in consideration of the health and safety of DOCCS staff.

Chain of custody procedures shall be followed in an effort to prevent tampering, contamination, substitution, and the adulteration of collected specimens. Only positive on-site screens requiring corroboration in accordance with this directive are to be sent to the forensic toxicology laboratory (contractor/vendor) for confirmation.

Where it is not possible to perform an initial on-site drug screen due to the type of substance or drug indicated and the only available method of testing for the substance or drug would be through a laboratory analysis of the urine specimen, the Officer shall first obtain the approval of the SPO or Bureau Chief before submitting the sample to the contractor for testing and confirmation. The approval by the SPO or Bureau Chief is to be recorded in the CMS record of the parolee. The CMS case-specific entry shall note the approval of the supervisor and type of substance or drug confirmation sought from the laboratory.

Staff shall use the contractor's proprietary chain of custody form when submitting requests to the laboratory for confirmation testing. Confirmation tests are performed to determine the presence of drugs or drug metabolites in a particular sample.

POs, SPOs, Bureau Chiefs, and other designated DOCCS staff shall adhere to the following procedures:

1. The Officer will inform the parolee that the specimen provided will be submitted to a forensic toxicology laboratory for confirmation testing.
2. If confirmation of an on-site drug test is required, the initial specimen must be used for the confirmation test by the toxicology laboratory (contractor and/or vendor).
3. The Officer or designee shall prepare the specimen according to contractor and/or vendor specifications to include the required chain of custody form (Attachment A) provided by the contractor. Staff shall use the contractor's (laboratory's) proprietary chain of custody form, security tape or seal, shipping bag, and shipping label.
4. The chain of custody form must be accurate and legible and the document must clearly note the parolee's name, NYSID, and test date.
5. The Officer shall ensure that the appropriate confirmation specimen bottle, container, or cup is used in the collection of the sample and for purposes of submission to the laboratory (contractor).
6. The specimen and chain of custody form (Attachment A) shall remain in the full view of the Officer or designee and the parolee at all times and until the specimen is labeled and sealed.
7. The Officer shall instruct the parolee to initial the identification label.
8. The Officer shall ensure that the identification label is affixed and/or secured to the specimen container.
9. The Officer and the parolee shall sign the chain of custody form (Attachment A). A parolee's failure to sign the form shall not invalidate the test results.
10. A copy of the chain of custody form shall be filed in the parolee's case folder.

11. In the presence of the parolee, the Officer or designee shall prepare and secure the specimen for shipping according to the contractor-provided confirmation test instructions and the Officer shall ensure the package is properly secured to prevent tampering or leakage. The contractor-provided chain of custody form must be placed inside the shipping package.
12. The confirmation test shipping package shall be shipped on the day that the specimen is obtained. If the specimen package is not sent to the contractor on the date the specimen was collected, the Officer shall document in the CMS record of the subject the steps taken to ensure the chain of custody and the subsequent shipping of the specimen package. Any delays in shipping the package on the date of the specimen collection shall be immediately reported to the Officer's supervisor.
13. The shipping of the specimen package to the contractor (toxicology laboratory) shall be recorded in the CMS record of the parolee.
14. Upon receipt of the confirmation test results from the contractor (laboratory), the PO or designee shall enter the results in the CMS record of the parolee by close of business on the date of receipt of the results by either the PO or SPO.
15. If the confirmation test results are positive for an illegal, unauthorized, or illicit substance(s), the PO shall initiate a case conference with the SPO to determine the appropriate course of action.
16. If the confirmation test results are negative for an illegal, unauthorized, or illicit substance(s), the PO shall initiate a case conference with the SPO to provide verification of the negative test results.
17. The PO or designee shall notify the parolee of any negative test results during the normal course of business and as soon as practicable.
18. All confirmation testing and laboratory produced documentation received from the contractor such as test results, reports of tampering and/or contamination, and/or notifications regarding rejected specimens shall be immediately reported to the SPO or Bureau Chief for review and appropriate action. Where necessary and based on the current status of the parolee or alleged violator, this information and the documentation must be immediately reported to and provided to the Parole Revocation Specialist.
19. All confirmation testing and laboratory produced documentation received from the laboratory such as test results, reports of tampering and/or contamination, or notifications regarding rejected specimens shall be placed in the parolee's case folder and the information shall be entered in the CMS record of the parolee.
20. If the laboratory (contractor) was not able to test the specimen due to insufficient quantity, dilution, contamination or adulteration, or due to chain of custody issues, the parolee shall be notified and retested in accordance with operating procedures.

G. Breath Alcohol Testing (Breathalyzer)

1. Staff shall only use DOCCS approved and authorized breath alcohol testing equipment and devices.
2. The Bureau Chief will ensure that all officers and designated personnel are properly trained in breath alcohol testing procedures.

3. Staff must adhere to all testing equipment instructions provided by the manufacturer or manufacturer's representative.
4. All breath testing equipment must be routinely calibrated and checked for accuracy in accordance with the manufacturer's instructions.
5. The Bureau Chief or designee shall be responsible for ensuring that all alcohol testing equipment is operating properly.
6. Parolees shall be tested in accordance with the reasons and rationales as referenced in Section IV-A-1 through 12.

## **V. CASE MANGAGEMENT SYSTEM (CMS) REQUIREMENTS**

- A. Community Supervision staff shall document all tests administered (or attempted) in the CMS record of the parolee.
- B. Staff will promptly and accurately record parolee data while ensuring that the information is accurate and complete.
- C. [Form CS4169A](#) shall serve as the source document for entering on-site test information in CMS.
- D. The case-specific CMS entry must include the name of the test (test type), device type used, substance or substances detected and, if applicable, the written admission and/or acknowledgement of drug or alcohol use.
- E. All confirmation tests performed by a forensic laboratory and all associated results received shall be entered in CMS. Staff must document completion of the laboratory chain of custody form and receipt of the test report in the CMS record of the parolee.
- F. Alcohol tests performed using a breathalyzer machine shall also be recorded in CMS.
- G. The Officer obtaining the specimen and performing the on-site test(s) is primarily responsible for documenting the tests performed and the results by entering the information in the CMS record of the parolee.
- H. The CMS record shall document any failure to appear for testing and any refusal to provide a specimen for testing.
- I. If a parolee is unable to provide a specimen, staff must document the circumstances in the CMS record.
- J. Community Supervision staff shall comply with all Department issued directives, instructional memorandums, and desktop (or printed) guides that provide directions for entering parolee information into the CMS.

## **VI. ON-SITE SCREENING AND CONFIRMATION TEST REPORTS**

- A. [Form #CS4169A](#) is to be filled out each time a parolee is tested utilizing an on-site device. This is a multi-purpose form designed to function as a testing record for each individual tested, and as an admission record that can be introduced as evidence at a violation hearing. [Form #CS4169A](#) is to be distributed as follows:
  1. Original to the Community Supervision case folder
  2. Copy to the Bureau Chief
- B. Confirmation testing shall be initiated using the contractor and/or vendor provided chain of custody form (Attachment A). The chain of custody form is to be distributed as follows:
  1. Original to toxicology laboratory

2. Copy for the Community Supervision case folder
- C. The confirmation (laboratory) test results report and the chain of custody form are to be filed in the Community Supervision case folder.

## **VII. PROGRAM SUPPORT AND INVENTORY – CS REGIONS AND BUREAUS**

- A. The Regional Director shall be primarily responsible for staff compliance with regard to the Department's Inventory Control Program as detailed in Directive #2945, "Inventory Control." The Regional Director shall ensure that staff remains in compliance with policy requirements including the scheduling of inventories, frequency, standards, perpetual inventory records, independent physical inventory and inspection, reconciliation of discrepancies, and documentation audit.
- B. The Regional Director, Assistant Regional Director, and Bureau Chief shall be responsible for the equipment inventory of breath alcohol testing and/or breathalyzer devices in accordance with Directive #2944, "Equipment Control."
- C. Each Bureau shall have one staff person designated by the Regional Director or their designee to serve as the Drug and Alcohol Testing Coordinator. Under the direction of the Regional Director, Assistant Regional Director, and the Bureau Chief, the Coordinator shall be responsible for the administration of the following:
  1. Ordering, receiving, and maintaining drug and alcohol testing supplies.
    - a. When supplies are reduced to a 60-day inventory, the Coordinator shall order a three month inventory of supplies on the established order forms.
    - b. Ensure supplies are used before their expiration dates to prevent waste with the oldest inventory stored in such a way that it will be used first.
    - c. If an order is not received within approximately three weeks of the requisition date, the Coordinator shall contact Support Operations and request tracking of the purchase requisition through the vendor.
    - d. The Coordinator shall verify that new supply shipments correspond with the purchase orders and requisitions. If damages or shortages in the shipment are encountered, they shall be recorded on the packing slip and signed by the Coordinator. All packing slips shall be submitted to the Regional Office and Support Operations within five business days after delivery of the shipment. The Coordinator shall keep a copy of the packing records with the corresponding order forms.
    - e. Supplies shall be kept in a secured area during non-business hours and any supplies requiring refrigeration shall be refrigerated as directed by the manufacturer.
    - f. The Coordinator is responsible for ensuring that all testing devices, equipment, and supplies are received and appropriately maintained.
    - g. The Coordinator shall also be responsible for all record keeping related to the storage, distribution, assignment, removal, and transfer of all testing equipment, devices, and supplies.
  2. The drug and alcohol testing Coordinator shall inventory supplies on a monthly basis utilizing the DOCCS approved inventory and recordkeeping documents and forms. The Coordinator shall keep a supply of these forms in the area where drug and alcohol testing devices are stored. The Coordinator shall:
    - a. Maintain the completed forms for completion of the monthly inventory.



- b. Inventory all drug and alcohol testing devices monthly and document them on the Community Supervision Internal Operations Monthly Drug and Alcohol Testing Inventory Tracking System.
  - c. The monthly inventory report shall be submitted to the Office of Internal Operations via email by the fifth business day following the report month.
- 3. Consult and confer with the drug and alcohol testing vendors and/or contractors regarding product requisitions, delivery, and documentation.
- 4. Maintain records/statistics reflecting drug and alcohol testing.
  - a. The Coordinator shall collect and complete information identified on the Internal Operations Monthly Drug and Alcohol Testing Tracking System and email the records and statistical information to the Office of Internal Operations by the fifth business day following the report month.
  - b. All records relating to the monthly inventory shall be filed in the bureaus and placed with a copy of the corresponding monthly report and maintained by the Coordinator.
  - c. Copies of drug and alcohol testing supply order forms, supply invoices, and monthly statistics shall be kept for a minimum of three years in each Bureau and Regional Office.
- D. The Regional Director or designee shall advise all affected staff and the Director of Internal Operations within three business days when a drug testing Coordinator assignment has changed.
- E. Bureau Chiefs shall monitor drug and alcohol testing and safety procedures in their respective offices to ensure Officer compliance with policy, provide immediate corrective action, and arrange training sessions to address any new or recurrent issues.
- F. In addition to conducting initial staff training, the Bureau Chiefs or their designees shall conduct periodic unit meetings and training sessions in an effort to advise Officers and bureau personnel of any policy or procedural changes and to address proper protocols for drug and alcohol testing, purchasing, and inventory.

## **VIII. STAFF TRAINING**

- A. Officers conducting drug and alcohol testing must be trained to collect the specimens and trained to perform the on-site tests using devices, supplies, and equipment provided by a vendor and/or contractor approved by the Department. Officers will also be trained in the requirements of chain of custody, transporting specimens, and documenting the tests performed and the results received.
- B. The Department will provide training for specimen collection and testing in accordance with this operating procedure, manufacturer (vendor) product specifications, and universal safety precautions.
- C. Training shall be conducted by the vendor responsible for providing the testing products or by staff trainers approved by the Director of Training or the Regional Director(s).
- D. Training shall be incorporated into the Parole Officer Recruit Training Program, provided during initial Community Supervision bureau orientation, and via in-service bureau training programs under the direction of the Regional Directors and Bureau Chiefs.
- E. All training participation shall be documented in the Officer and the employee training records.

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**IX. STAFF SAFETY**

- A. All Officers and staff members shall follow workplace safety procedures as follows:
1. Staff shall remain familiar with all Department issued directives, instructional documents, and training materials produced in connection with workplace safety and the potential exposure to bio-hazards and bodily fluids.
  2. Officers and other designated staff responsible for the collection of specimens, performing on-site testing, and preparing samples to be submitted for laboratory analysis shall wear latex, vinyl, or other disposable protective gloves.
  3. All staff shall remain familiar with standard precautions for the handling of urine specimens and saliva samples. Staff should wear protective gloves for purposes of protection against potential exposure to bio-hazards and bodily fluids.
  4. No urine specimen shall be tested by staff if blood is visible or if blood appears to be visible in the specimen. Staff shall use extreme caution when disposing of the urine specimen.
  5. Staff should immediately wash their hands or other affected areas with antibacterial soap and warm water if exposed to or contacted by bodily fluids during the collection, testing, or packaging of specimens.
  6. Staff shall be provided with secure and appropriately equipped collection rooms and/or lavatories (restrooms) for purposes of procuring specimens, conducting on-site tests, and preparing specimens for submission to the toxicology laboratory.
  7. Bureau Chiefs shall ensure that approved cleaning, disinfecting, and decontaminating products are made available to staff and readily accessible. Community Supervision staff shall not purchase any products from unauthorized sources or retail outlets as the potential exists that such products may contain hazardous substances or materials.

1654301820 NON-FEDERAL FOUR-PART DRUG TESTING CUSTODY AND CONTROL FORM

160686/1429044

Aleré 1111 Newton St., Gretna, LA 70053  
450 Southlake Blvd., Richmond, VA 23236  
Phone: 800 433 3823 / Fax: 504 361 8298

Airbill / Courier Tracking Number

Specimen ID 206707509

1101 REV 07 2013

**STEP 1: TO BE COMPLETED by Collector or Employer/Client Representative**

A. Employer/Client Name, Address, Phone, & Fax:  
NYS DOCCS/PEEKSKILL A/O  
201 SOUTH JAMES ST.  
BASERENT  
PEEKSKILL, NY 10566  
914-724-4228 914-724-4223

Facility Number 414003

B. MRO Name, Address, Phone, & Fax:

C. Name/ID: Sub Acct:

D. Donor SSN or Employee ID No. E. Daytime Phone No.: F. Evening Phone No.:

G. Reason for Test: ☐ Pre-Employment ☐ Random ☐ Reasonable Suspicion/Cause ☐ Post Accident ☐ Return to Duty ☐ Follow-up ☐ Other

H. Panel: If a panel is not selected below, Aleré will use the default for the Facility listed above. See back of copy 4 for additional panel instructions.

☐ A Primary Default Panel ☐ B 3532 SDR BE/OPIEX ANPKS ☐ C 3536 SDR BE/OPIEX ETOM ☐ D 3533 SDR BE/OPIEX BARB ☐ E 3534 SDR BE/OPIEX PCP ☐ Other: (write in panel number)

I. Collection Site Name & Address: Collector Phone No.: (Enter here if not printed below)

NYS DOCCS/  
SARE AS STEP 1

Collector Number 82650

**STEP 2: TO BE COMPLETED by Collector - Within 4 minutes, read temperature of specimen.**

Within range? ☒ Yes 90°-100°F / 32°-38°C ☐ No ☐ Below 90°F / 32°C ☐ Above 100°F / 38°C

Oral Fluid, temperature ☐ not applicable

Split Specimen ☒ No ☐ Yes

Observed ☐

Remarks:

**STEP 3: TO BE COMPLETED by Collector and Donor - Collector affixes bottle seals(s) to bottle(s). Collector dates seal(s). Donor initials seal(s).**

**STEP 4: TO BE COMPLETED by Donor**

I certify that I provided my specimen to the collector; that I have not adulterated it in any manner; each specimen container used was sealed with tamper-evident seal in my presence; and that the information provided on this form and on the label affixed to each specimen container is correct.

Date: Donor Date of Birth (Mo./Day/Yr.):

**STEP 5: CHAIN OF CUSTODY - Initiated by Collector and completed by Laboratory**

I certify that the specimen given to me by the donor identified above was collected, labeled, sealed, and released in accordance with applicable requirements.

PRINT Collector Name (First, MI, Last) Signature of Collector Date Collected (Mo./Day/Yr.) Time Collected Specimen Bottle(s) Released to: COURIER Service Transferring Specimen to Lab

**STEP 6: TO BE COMPLETED by Lab**



RECEIVED AT LAB: Demitra Barnes  
Signature of Accessioner PRINT Accessioner Name (First MI Last)  
Date (Mo./Day/Yr.) Primary Specimen Seal Intact? ☒ Yes ☐ No, Enter Remark Specimen(s) Released to: TEMPORARY STORAGE

Remarks:

1654301820 206707509 B (SPLIT) 8/3/17 206707509 SPECIMEN BOTTLE SEAL

# **EXHIBIT 3**



 <p><b>Corrections and Community Supervision</b></p> <p><b>DIRECTIVE</b></p>	<p>TITLE</p> <p><b>Drug Tests for Employees</b></p>		<p>NO. 2115</p>
			<p>DATE 09/27/2018</p>
<p>SUPERSEDES</p> <p>DIR #2115 Dtd. 05/23/2018</p>	<p>DISTRIBUTION</p> <p>A</p>	<p>PAGES</p> <p>PAGE 1 OF 8</p>	<p>DATE LAST REVISED</p>
<p>REFERENCES (Include but are not limited to)</p> <p>Public Health Law Section 575; Civil Service Law; Correction Law Section 77, OTETA, Employee Manual 2.12; ACA Expected Practices: 4-4063, 4-JCF-6D-03</p>		<p>APPROVING AUTHORITY</p> 	

- I. **PURPOSE:** The purpose of this directive is to establish a written policy and procedure for conducting drug tests of employees within the Department of Corrections and Community Supervision (DOCCS) when:
- A. There is a reasonable suspicion that such employee is under the influence of or using illegal drugs or controlled substances, or abusing prescription drugs; or
  - B. The employee is being tested pursuant to federal or state law; or
  - C. The employee regularly comes into contact with illegal drugs or controlled substances through their assignments with the Department's Office of Special Investigations Narcotics Unit and/or K-9 Units.
- II. **POLICY STATEMENT:** The use of illegal drugs or controlled substances or abuse of prescription drugs by an employee, regardless of the position held, adversely affects the Department's ability to safely confine and supervise inmates, returned parole violators, and adolescent offenders. Additionally, it impairs the efficiency of the workforce and endangers the lives and security of employees, inmates, parolees, adolescent offenders, and the community. The use of illegal drugs and/or abuse of prescription drugs undermine public trust and are, therefore, strictly prohibited by the Department. In order to identify possible illegal drug or controlled substance usage or abuse of prescription drugs, and to curtail the introduction of illegal drugs or controlled substances into Department facilities or its offices, procedures to test for the use of illegal drugs or controlled substances shall be established. DOCCS, however, will not engage in random drug testing of its employees except as required by federal and/or state law, or for staff who regularly come into contact with illegal drugs or controlled substances.
- DOCCS, as part of its concern for its employees, recognizes that the use of illegal drugs or controlled substances causes problems which may have a far reaching negative effect on the security of the Department's facilities, its offices, the community, and on the health, well-being, and productivity of the workforce. It was with problems such as these in mind that DOCCS established its Employee Assistance Program (EAP). The Department fully supports EAP and encourages employees who are addicted to illegal drugs or controlled substances or abusing prescription drugs to seek the confidential services of EAP at their workplace. Information concerning the use of illegal drugs or controlled substances revealed to EAP representatives by an employee cannot be used against the employee for any purpose.

### III. APPLICATION

- A. An employee of the Department may be ordered to submit to testing to determine the presence of illegal drugs or controlled substances or abuse of prescription drugs, where reasonable suspicion to believe illegal substance abuse exists, as required by federal and/or state law, or where staff regularly comes into contact with illegal drugs or controlled substances. Refusal to submit to testing may result in suspension and disciplinary charges.
- B. Random Drug Tests: Pursuant to state law governing employees who work at adolescent offender facilities, federal law governing employees who operate motor vehicles that qualify under the Omnibus Transportation Employee Testing Act (OTETA) and staff who regularly come into contact with illegal drugs or controlled substances through their assignments with the Department's Office of Special Investigations Narcotic Unit and/or K-9 Units will be randomly selected for drug testing.
- C. Balance of Interests: In determining whether to order a test in a particular case, the Department must balance an employee's reasonable expectations of privacy from unreasonable intrusions against the Department's interest in assuring the integrity and fitness of its employees and the safety and security of its facilities, offices, and the community; as well as the requirements of federal and/or state law that requires the random drug testing of an employee and for those staff who regularly come into contact with such substances through their assignments with the Department's Office of Special Investigations Narcotics Unit and/or K-9 Units.
- D. Justifications: The order for a urinalysis must be justified by law or based upon a reasonable suspicion that the employee has reported for duty under the influence of illegal controlled substances, is abusing prescription drugs, or is engaging in the use, distribution, or sale of illegal drugs or controlled substances either on or off duty; and, where staff regularly come into contact with such substances through their assignments with the Department's Office of Special Investigations Narcotics Unit and/or K-9 Units.
- E. Reasonable Suspicion Definition: While the "reasonable suspicion" standard does not lend itself to precise definition or mechanical application, vague or unparticularized or unspecified or rudimentary hunches, or intuitive feelings do not meet the standard. Reasonable suspicion is the quantum of knowledge sufficient to induce an ordinarily prudent and cautious person to act under the circumstances. Reasonable suspicion must be directed at a specific person and be based on specific and articulable facts and the logical inferences and deductions that can be drawn from those facts.

Reasonable suspicion may be based upon, among other matters: observable phenomena, such as direct observation of use and/or the physical symptoms of using or being under the influence of illegal drugs or controlled substances such as, but not limited to, slurred speech, disorientation, a pattern of abnormal conduct or erratic behavior, or information provided either by reliable and credible sources or which is independently corroborated. The Department will not test solely on the information of inmates or anonymous sources unless the information is corroborated by reliable and credible sources or objective evidence.

- F. Notice While Off Duty: Employees who are off duty at the time they are ordered to submit to a suspicion based test are required to promptly report to the designated workplace to submit a specimen, as directed and outlined in this directive. Failure to promptly comply with such an order may lead to disciplinary action, which may include suspension from duty without pay.

NOTE: Employees who are off duty at the time they are selected for a random based drug test will NOT be ordered to report to the designated workplace; however, they will be tested upon their return to work.

- G. Members of the Office of Special Investigations Narcotics Unit will be subject to random selection for drug testing.
- H. Members of the Department K-9 Unit will be subject to random selection for drug testing.
- I. If an employee has requested EAP assistance for his or her abuse of an illegal drug or controlled substance or prescription drug, prior to any incident leading independently to the determination of the existence of reasonable suspicion of use of an illegal drug or controlled substance, or the employee's arrest for use, possession, or distribution of an illegal drug or controlled substance, and such employee is following the EAP program, that employee will not be subject to drug testing under this policy for such prior use, but this policy will apply with full force to any subsequent incident where reasonable suspicion is found.

#### IV. PROCEDURE

- A. Whenever an employee has been randomly selected, or when a supervisor reasonably suspects based on his or her own observations, that an employee has reported for duty in an impaired condition due to the use of an illegal drug or controlled substance or the abuse of prescription drugs, such information should immediately be communicated to the Superintendent, Regional Director, Unit Head, or their designee. Such communication should be made as confidentially as reasonably possible.

Section IV, paragraphs B through K outline the procedures to be implemented in the event of a reasonable suspicion test. Paragraphs L through O outline the procedure to implement a random drug test. For employees being tested under the OTETA, the specific procedures outlined in the statute will be followed.

- B. Investigation: The Superintendent, Regional Director, Unit Head, or the Officer of the Day will assign a supervisor to act as an investigator to conduct an investigation of the allegation. The purpose of the investigation is to determine if the available facts objectively indicate that reasonable suspicion exists to pursue the inquiry. If the allegation is based on someone's observation of the suspected employee, the investigator must personally observe the suspected employee. If there is any reason to believe the suspected employee is trafficking illegal drugs or controlled substances, the fact shall be immediately communicated to the Office of Special Investigations. The investigation should be conducted with a degree of discretion that will ensure, as much as possible, the dignity and privacy of the employee.

- C. Assessment of Facts: When the Superintendent, Regional Director, Unit Head, Officer of the Day, or Deputy Chief or above from the Office of Special Investigations determines the available facts objectively indicate that reasonable suspicion exists and that a test of the employee would yield a positive result for the presence of an illegal drug or controlled substance or its metabolites, documentation of such facts shall be maintained. The investigator shall be instructed to complete Sections I and II of [Form #1240](#), "Request for Alcohol or Drug Testing of Employee." In completing Section I, the investigator shall exercise care and accurately document the objective facts contributing to and forming the basis for the reasonable suspicion. These facts must include a description of the employee's appearance and demeanor, the observations of witnesses, and the nature and source of the information.

Where the employer's source of information constituting reasonable suspicion that a chemical test for a particular employee would likely yield a positive result consists in whole or in part of observations made by a "confidential informant" (confidential informant meaning a full time employee or agent of a governmental law enforcement agency), the source of that part of the information shall be deemed to be sufficiently identified by recording the name and location of the governmental law enforcement agency involved without disclosing the name of the "confidential informant."

In disciplinary proceedings based on refusal to submit to drug testing or upon testing positive for use, the Department cannot be compelled to reveal the name of any "confidential informant" nor can evidence of the contents of the report of such "confidential informant" be suppressed because of the Department's refusal to reveal the name of such "confidential informant."

- D. Requesting Authorization: The Superintendent, Regional Director, Unit Head, Officer of the Day, Deputy Commissioner/Chief of Investigation, Assistant Commissioner/Assistant Chief of Investigations, Deputy Chief, Assistant Deputy Chief from the Office of Special Investigations, or higher ranking authority shall communicate all such information to an attorney assigned to the Office of the Deputy Commissioner and Counsel for a determination that facts required to establish reasonable suspicion are present and have been properly documented. The Communications Control Center shall be contacted in order to assist in locating an attorney during hours when these offices are closed. The attorney's determination shall be recorded on [Form #1240](#).
- E. Authorization: If the attorney determines that reasonable suspicion does not exist to order testing, no testing shall occur, no documentation of the request may be kept in the employee's personnel records, and evidence of the incident may never be used against any employee in any subsequent disciplinary proceeding or for any other purpose. When an attorney finds that reasonable suspicion exists, the attorney's name shall be included in the documentation, and the testing procedures below shall be followed.
- F. Notice of Rights: An employee of the Department ordered to submit to testing shall be advised that he or she has the right to consult with counsel or a union representative, and the employee shall be afforded an opportunity, if he or she requests, to consult with counsel or a union representative provided that counsel or the union representative responds without undue delay. Reasonable efforts to assist the employee in contacting a union representative or counsel, if the employee desires, shall be made.



The employee shall also be given a verbal explanation, in the presence of counsel or a union representative if requested, of the factual basis for the reasonable suspicion including a description of the conduct leading to the formation of a reasonable suspicion, the employee's acts, the relevant dates, places and times thereof, and the source of information (see limitation on disclosure of "confidential informant" in Section IV-C above). The Superintendent, Regional Director, Unit Head, Officer of the Day, or their designee shall either read the summary of objective facts to the employee as recorded on the appropriate form by the attorney or reiterate the objective facts to the employee as verbally communicated by the attorney pursuant to Section IV-D.

- G. Order to Submit Urine Specimen - Location, Collection, and Documentation: The Superintendent, Regional Director, Unit Head, or their designee shall order the employee to proceed to the Superintendent's office, Bureau Chief's office, or other secure and private location with toilet facilities, free from inmate or public scrutiny, escorted by a supervisor. Where reasonably practical, the supervisor shall be of the same gender as the person to be tested. An investigator may also serve as the escort employee. Where reasonably practical, the investigator shall be of the same gender as the person to be tested. The escorting employee shall bring the appropriate form authorizing such testing to the Superintendent, Bureau Chief, Unit Head, or their designee. Specimen collection shall occur in a private setting free of any substances which may be used to contaminate the specimen. The escorting employee will provide the employee to be tested with a container to be used to collect the sample. Visual observation of urination will not be required or permitted, except in emergencies where no other means are possible, to ensure the integrity of the sample. When visual observation is permitted, the observer will be of the same gender as the employee. If the employee is unable to provide a specimen when requested, he or she will be given a reasonable time period considering all relevant circumstances to provide the sample. The employee shall be paid for all of his or her time including overtime where applicable. The specimen will be provided by the employee being tested and the filled container will be immediately given to the escorting employee, who will examine the sample to determine that it is the appropriate color, clarity, temperature, and volume.

The specimen will be immediately sealed and tagged in three separate containers; two of which the Department will maintain in custody and the third will be delivered to the employee. The Department will maintain secure custody of the two specimen containers in such a way so that they can be later tested for the presence of illegal drugs or controlled substances. Chain of custody documentation for each specimen shall be maintained from receipt to destruction. Urine specimens obtained from an employee assigned to a Community Supervision field office shall be transferred to a correctional facility within 24 hours for secure storage in accordance with established procedures. Any urine specimen not immediately transferred to a correctional facility shall be secured in a locked and secure location in the office of the Bureau Chief.

The chain of custody will reflect the date and time the specimen was secured and by whom it was secured. The employee and his or her counsel or union representative shall be permitted to be present to observe the sealing and tagging of the specimen containers.

In the event that the Superintendent's or Bureau Chief's office is not available, an alternate location shall be selected. Care should be taken in all cases to ensure that the privacy of the employee is considered and that every reasonable effort is made to respect the dignity of the employee. The alternate location shall be selected so as to minimize the possibility of public attention. A supervisor in all cases shall ensure the integrity of the testing procedures, including placement of the specimen in the containers and the surrender and transfer of the specimen.

Throughout all aspects of these procedures, including transportation and the actual obtaining of the sample, every reasonable effort must be made to ensure the dignity and privacy of the employee. All reasonable efforts shall be made to avoid public attention, and these procedures shall be carried out as discreetly as reasonably possible.

- H. Testing Urine Specimens: The first specimen container will undergo a laboratory testing by gas chromatography with mass spectrometry or an equivalent scientifically accepted method that provides quantitative data about the detected drug or drug metabolites. Only a laboratory licensed pursuant to Section 575 of the Public Health Law shall be used to analyze and report on samples. Any positive result of said test will be retested for verification by a confirming test conducted by the laboratory testing the first sample. The confirming test will also be gas chromatography with mass spectrometry or an equivalent scientifically accepted method.
- I. Employee Right to Confirmation Testing: If the results of the confirming test of the original specimen are positive, the employee will have the right, within ten working days of the employee's notification in writing of the results of the confirming test, to have the second specimen tested by a licensed laboratory of his or her choice for testing by gas chromatography with mass spectrometry or an equivalent scientifically accepted method at State expense. A copy of the lab report of such test will be provided to the employee.
- J. If the test of the second specimen is confirmed positive, or if the employee does not exercise his or her right to have the second specimen tested where the confirming test of the first sample has been positive, the employee will be notified and will be given the opportunity to present evidence and/or information that the positive test resulted from prescribed or over the counter drugs or that special circumstances may have affected the test results. The employee will be required to sign a Health Insurance Portability and Accountability Act (HIPAA) compliant release of information in the event that a physician must be contacted for clarification or verification.
- K. If the results of either of the two confirming tests are negative, the request for testing, the finding of reasonable suspicion, as well as results of said test will not be kept and Section IV-E of this directive will apply. If both confirming tests are positive, or if the first confirming test is positive and the employee waives his or her right to request a second confirming test, the employee may be suspended by the Director of Labor Relations pending disciplinary charges, provided such suspension is appropriate under the applicable collective bargaining agreement, and law, rule, or regulation.
- L. Employees assigned to an adolescent offender facility who are randomly selected for drug testing, consistent with state law, will be directed to submit to a presumptive test utilizing a saliva test kit. The saliva test will be administered without regard to gender. Test kit instructions will be implemented consistent with the manufacturer's directions.

Facility employees subject to testing, other than members of the facility Executive Team, will be tested by a designated member of the facility Executive Team. Facility Executive Team members will be subject to testing by the HUB Supervising Superintendent or an Assistant Deputy Chief or higher from the Office of Special Investigations. All efforts will be made to avoid the appearance of any conflict of interest. Additionally, Executive Team members who fraternize with subordinate staff (i.e. dating, married, co-habit, etc.) shall not administer a saliva test of the subordinate. Failure to act in a manner that avoids the appearance of a conflict of interest may lead to disciplinary action.

- M. Employees assigned to the Office of Special Investigations Narcotics Unit and the Department K-9 Unit who are randomly selected for drug testing will be directed to submit to a presumptive test utilizing a saliva test kit. The saliva test will be administered without regard to gender. Test kit instructions will be implemented consistent with the manufacturer's directions. Employees assigned to these units who are subject to such testing will be tested by a unit supervisor at a salary grade level of M-2 or equivalent/above. Unit supervisors will be subject to testing by the Assistant Commissioner with oversight of the unit. All efforts will be made to avoid the appearance of any conflict of interest. Additionally, unit supervisors and Executive Team members who fraternize with subordinate staff (i.e., dating, married, co-habit, etc.) shall not administer a saliva test of the subordinate. Failure to act in a manner that avoids the appearance of a conflict of interest may lead to disciplinary action.
- N. Saliva test results will be immediately reported to the Director of the Bureau of Labor Relations. If the saliva test results in a presumptive positive, reasonable suspicion exists to administer a urine test as specified in Section IV, paragraphs F through K. If the presumptive saliva test result is negative, no further action is required. Regardless of the outcome of the saliva test, the employee may take possession of the test if they so desire; however, presumptive positive test results will be photographed by the employer as evidence of reasonable suspicion and a basis to order the employee to submit a urine specimen for testing.
- O. The Bureau of Labor Relations will notify the appropriate Superintendent, HUB Supervising Superintendent, the Office of Special Investigations, or Special Operations regarding which employee(s) have been randomly selected for a saliva test. The Bureau of Labor Relations will maintain a record of the employees that are randomly selected and the test results for the purpose of compliance review with applicable federal and state law.

## **V. GENERAL PROVISIONS**


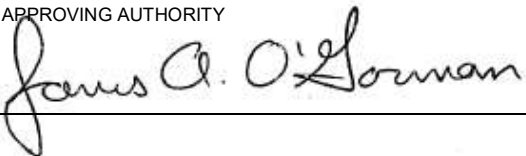
- A. Refusals: An employee's refusal to submit to ordered testing, or his or her refusal to cooperate in all aspects of the testing procedures, shall be communicated to the Director of Labor Relations and may subject the employee to suspension and severe disciplinary charges, as appropriate, under the applicable collective bargaining agreement, and law, rule, or regulation.
- B. At the conclusion of the testing procedures, the employee may be suspended if the facts independent of the test results justifies the actions and constitute a basis under the applicable collective bargaining agreement or law.

In a case where an employee is judged too impaired to continue work, he or she is to be assisted with making arrangements for transport home. The employee is also to be strongly encouraged not to drive. If the employee insists on driving, the facility Superintendent, Regional Director, Unit Head, or other appropriate authority should be immediately notified.

- C. Results: When written reports of the laboratory tests are received by the Superintendent, Regional Director, or Unit Head, a copy shall be forwarded to the employee who was tested and an additional copy forwarded to the Bureau of Labor Relations.
- D. Other: Each test ordered under this policy shall be reviewed by the Bureau of Labor Relations to ensure compliance with all applicable procedures.
- E. Laws, Rules, Regulations, Negotiated Agreements: Where any provision of this policy is determined to be in conflict with the applicable collective bargaining agreement or law, statute, rule, or regulation, including Civil Service Law Section 72 and Section 75, said collective bargaining agreement, law, statute, rule, or regulation will control. It is not the intent of this policy to abridge any rights an employee may have under applicable collective bargaining agreements, laws, statutes, rules, or regulations including Civil Service Time and Attendance Rules, and any rights that an employee may have for discretionary treatment under the Civil Service Time and Attendance Rules.
- F. Disciplinary Action: If the investigation results in a just cause for discipline as defined in the applicable collective bargaining agreement, discipline shall be imposed with regard to the circumstances of each case. Time in service and prior offenses or lack thereof may be considered in determining appropriate penalties.
- G. Records: Records concerning positive tests for suspicion and random based drug testing will be maintained confidentially in the employee's medical file. Administrative records of the random selection drug testing will be maintained by the Bureau of Labor Relations for purposes of compliance review with established laws, rules, and regulations.
- H. Defenses: An employee who claims to have been tested under this policy without reasonable suspicion, or in a manner inconsistent with this policy or federal/state law, can assert such claim as a defense in any disciplinary proceeding brought against him or her. Nothing in this policy shall be construed to deprive an employee of any other appropriate defenses or arguments in a disciplinary arbitration.



# **EXHIBIT 4**

 <p><b>Corrections and Community Supervision</b></p> <p><b>DIRECTIVE</b></p>	<p>TITLE</p> <p><b>Urinalysis Testing</b></p>		<p>NO. 4937</p>
			<p>DATE 12/27/2018</p>
<p>SUPERSEDES</p> <p>DIR. #4937; Dated 10/03/2017</p>	<p>DISTRIBUTION</p> <p>A B</p>	<p>PAGES</p> <p>PAGE 1 OF 10</p>	<p>DATE LAST REVISED</p>
<p>REFERENCES (Include but are not limited to)</p> <p>7NYCRR, Part 1020</p>	<p>APPROVING AUTHORITY</p> 		

- I. **POLICY:** Urinalysis test procedures shall be used to verify whether or not an inmate has used drugs and may be used to verify whether or not an inmate has used alcohol.
- II. **DESCRIPTION:** This directive outlines the procedures to be followed by each facility in the administration of inmate urinalysis testing.
- III. **BACKGROUND:** The use by inmates of illicit drugs and alcohol presents a serious threat to the safety and security of a correctional facility. Urinalysis testing of inmates can be an effective means by which to detect and discipline inmates who use illicit drugs or alcohol. Aggressive and consistent urinalysis testing will be one of many components of a program to ensure a drug-free environment within the Department's facilities.
- IV. **PROCEDURE:** Urinalysis testing of inmates shall be conducted as set forth below:
  - A. Reasons for Testing
    1. When correctional staff has reason to believe the inmate has used drugs or alcohol, and/or the inmate is alleged to have been involved in an act of violent misconduct;
    2. When the inmate is found to be in possession of suspected illicit drugs or alcohol or associated paraphernalia, or when these are detected or found in an area controlled, occupied, or inhabited by the inmate;
    3. When the inmate is observed to be in possession of or using illicit drugs or alcohol, but correctional staff are unable to obtain a sample of the substance;
    4. When correctional staff receive information from a source that the inmate is currently under the influence of, or has recently used, illicit drugs or alcohol;
    5. When an inmate returns late from, or on a random or routine basis when the inmate returns from:
      - a. A furlough, work release, or other Temporary Release Program;
      - b. Community service; or
      - c. An outside work detail;
    6. Prior to and after an inmate participates in a Family Reunion Program visit;
    7. As part of a computer-generated program for random testing of all inmates;
    8. As part of a computer-generated program for random testing of inmates who have been found guilty of drug or alcohol related misconduct in the previous one-year period; and

9. A Watch Commander or higher authority may also order inmates to be tested as part of a random urinalysis testing program on any identifiable unit of the facility, or any identifiable program area, or on any identifiable group of inmates. A random urinalysis testing program shall not be used for the purpose of harassing or intimidating any inmate.
- B. Identifying the Inmate to be Tested: The inmate for whom a urinalysis test is requested shall be identified by an employee and reported to a Lieutenant or higher authority, and each urinalysis test shall be approved by the Lieutenant or higher authority and documented on [Form #2082](#), "Request for Urinalysis."

NOTE: In facilities where Sergeants serve as Watch Commanders, such Sergeants may approve the urinalysis test.

- C. Ordering the Inmate to be Tested: The inmate ordered to submit a urine specimen for urinalysis testing shall be informed of the underlying reason (whether suspicion, routine, or random) why he or she is being ordered to submit the specimen. If the inmate refuses to submit the specimen, he or she shall be informed that this refusal constitutes a violation of facility rules and that he or she may incur the same disciplinary disposition that a positive urinalysis result could have supported. The resultant Misbehavior Report shall indicate that the inmate was informed of the above.
- D. Obtaining the Urine Specimen

1. The inmate shall be escorted or shall report to the facility hospital, clinic, or other appropriate area.
2. Security or medical staff shall hand to the inmate the specimen bottle, labeled with the inmate's name and number, the date, and any other relevant identifying information. This information shall be typed or written in indelible ink.

The inmate shall be asked to acknowledge that the information on the label is correct. The inmate shall also be asked if he or she has been taking any medication in the past month, and the inmate's response shall be noted on [Form #2082](#). If the inmate's response is "yes" and the subsequent test results are positive, an inquiry shall be made to medical personnel as to what medications the inmate has received in the past month which may lead to a positive result.

3. Security or medical staff shall ensure that the inmate submits an unadulterated urine specimen in the specimen bottle provided by witnessing the inmate urinate into the bottle. The inmate must be pat frisked prior to submitting the urine specimen, and he or she may be required to wash hands, or wear gloves, to further ensure that the specimen submitted is that of the inmate. The foregoing shall be conducted by security or medical staff of the same sex, in private, and outside the presence of other inmates or staff.

Female inmates may be required to urinate into a urine collector or an unused plastic cup, rather than the specimen bottle itself. The contents of the collector or the cup shall then be transferred to the specimen bottle by the inmate, or by the witnessing staff person in the presence of the inmate.

4. If the inmate is unable to provide a urine specimen immediately, he or she shall be detained until he or she is able to provide a urine specimen. Drinking water should be available in an amount not to exceed eight ounces per hour.

An inmate who is unable to provide a urine specimen within three hours of being ordered to do so shall be considered to be refusing to submit the specimen.

The inmate shall be informed that this refusal constitutes a violation of facility rules and that he or she may incur the same disciplinary disposition that a positive urinalysis result could have supported. The resultant Misbehavior Report shall indicate that the inmate was informed of the above.

NOTE: Inmates participating in an approved religious fast should not be required to provide a urine sample during fasting periods, since consumption of water may be necessary. Sample requests should be scheduled during other periods of the day and normal urinalysis testing procedures should then apply, including offering water to those inmates unable to provide a urine sample.

5. The staff person witnessing the submission of the specimen by the inmate shall make the appropriate notation on [Form #2082](#).

If the inmate is unable within three hours of being ordered or if the inmate refuses to submit a urine specimen, this fact shall be noted on [Form #2082](#).

- E. Procedure for Inmates Claiming to be Unable to Urinate in Presence of Others: The following procedures shall be employed when there is reasonable belief that the inmate is unable to provide a urine specimen due to an alleged inability to urinate in the presence of others (shy bladder). Reasonable belief is based upon the following criteria, including, but not limited to:

- A review of the Statewide Special Accommodation list by the Superintendent, Deputy Superintendent for Security (DSS), Captain, or Lieutenant to ascertain whether the particular inmate is listed on the "I-M\_Spec\_urinalysis\_Accom" list in the shared drive folder.
  - Prior disciplinary (FIDS) data indicating a history of urinalysis testing violations, if applicable, and/or computerized urinalysis testing (KDTS) data indicating if the inmate has provided a urine sample in the past with or without the use of alternate processes.
  - Any medical or mental health records supporting the inmate's claim (records to be reviewed by Health Services and/or OMH staff (see [Form #4937D](#), "Medical/Mental Health Records Review for Inmates Claiming to be Unable to Provide a Urine Sample Under Staff Observation").
  - The inmate's behavior and demeanor at the time of request for the urine sample.
1. Authorization: The Watch Commander shall be notified by the staff member assigned to obtain the urine sample and provide verbal authorization for these procedures.
  2. Location: The procedure shall take place in temporary isolation, in the facility drug watch cell/room or other appropriate area.
  3. Procedure
    - a. The inmate shall be strip frisked (to be recorded on [Form #1140](#), "Report of Strip Search or Strip Frisk"), subject to a metal detector search, and given a

gown or other garment to wear prior to placement in the drug watch cell/room and will be required to wash their hands or wear gloves to further ensure that the sample is unadulterated. The cell/room shall be thoroughly searched prior to admission of the inmate and, if applicable, the water supply to the cell/room shall be turned off.

- b. Security staff shall hand to the inmate the specimen container, labeled with the inmate's name and number, the date, and any other relevant identifying information consistent with the provisions of Section IV-D-2 of this directive. Staff shall not witness the inmate urinate into the specimen container.
  - c. The inmate shall be detained until he or she is able to provide a urine specimen for up to three hours including any time prior to a determination that special arrangements are necessary. Drinking water should be made available in an amount not to exceed eight ounces per hour. Water given to the inmate shall be consumed under the direct observation of staff. The inmate shall not be allowed to retain any amount of water.
  - d. An inmate who is unable to provide a urine specimen within three hours of the initial order to produce a sample shall be considered to be refusing to submit the specimen and a written Misbehavior Report citing the inmate with charge 180.14, noting that the procedures listed above in Section IV-E-3 were followed.
- F. Report of Special Accommodations: Whenever an inmate has been approved by a facility for a special urinalysis accommodation, an Outlook e-mail will be sent by the DSS (or functional Equivalent in those facilities without a DSS) to [Doccs.sm.SpecialHousing](mailto:Doccs.sm.SpecialHousing) with the following information, utilizing the format listed below:

<b>Inmate's DIN</b>	
<b>Inmate's Name</b>	
<b>Facility Name</b>	<i>Originating facility</i>
<b>Date of Request</b>	<i>i.e., Date the inmate requests the special accommodations</i>
<b>Reason for Special Accommodations</b>	<i>i.e., medical, shy bladder syndrome</i>

Facility Superintendents, DSSs, Captains, and Lieutenants may access the Statewide list through the Facility Operations shared drive in the folder:  
 "I-M\_Spec\_urinalysis\_Accom."



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**G. Process the Urine Specimen**

1. If the facility has a urinalysis testing apparatus:
  - a. All persons handling the specimen shall be noted under "Chain of Custody" on [Form #2082](#). The number of persons handling the specimen shall be kept to a minimum. The specimen shall be kept in a secure area at all times.
  - b. Place the specimen in a secured refrigerator, if it is not to be tested immediately. If it is anticipated that the specimen will not be tested within one day, it is recommended that the specimen be stored frozen. A logbook shall be kept in the vicinity of the refrigerator/freezer, and each person accessing the specimens shall note his or her name, the date, and the time of each such access.
  - c. The individual performing the urinalysis testing shall have been appropriately trained in the use of the testing apparatus, and shall precisely follow procedures recommended by the manufacturer for the operation of the testing apparatus.
  - d. If a positive result is obtained on the first test, the procedures followed and the results obtained shall be noted by the operator on [Form #2083.1](#), "Urinalysis Procedure Form." A second test shall be performed on the same sample. The results of the second test shall be noted on a second [Form #2083.1](#).  
If a positive result is obtained from the second test, the individual performing the urinalysis testing shall cause a Misbehavior Report to be issued. The inmate's copy of the Misbehavior Report shall be accompanied by [Form #2082](#) and [Form #2083.1](#), the inmate's printed results produced by the urinalysis testing apparatus for the positive tests, and a statement of the scientific principles and validity of the testing apparatus (use Attachment A).
  - e. If a negative test result is obtained on the second test, the specimen shall be considered negative and no Misbehavior Report shall be written.
2. If the facility does not have its own urinalysis testing apparatus, the specimen may be forwarded to an independent laboratory or to another facility that has a urinalysis testing apparatus.
  - a. Place the specimen in a secured refrigerator/freezer, if it is not to be forwarded immediately. All persons handling the specimen shall be noted on [Form #2082](#). The number of persons handling the specimen shall be kept to a minimum. A logbook shall be kept in the vicinity of the refrigerator/freezer, and each person accessing the specimens shall note his or her name, the date, and the time of such access.
  - b. Forward the specimen in accordance with procedures recommended by the testing laboratory or facility.

- c. If a positive result is obtained, an Inmate Misbehavior Report shall be issued. The inmate's copy of the Misbehavior Report shall be accompanied with [Form #2082](#), the inmate's test report from the laboratory or facility, and a copy of the methods and procedures used by the testing laboratory or facility and a statement of the scientific principles and validity of the testing apparatus used by the laboratory or facility.

- V. USE OF RESULTS:** In a subsequent disciplinary proceeding, a positive urinalysis result may be used as evidence of the illicit use by the inmate of the drug or alcohol indicated by the result. The record of the disciplinary proceeding must include [Form #2082](#) and:
- A. [Form #2083.1](#), any printed documents produced by the urinalysis testing apparatus, and the appropriate statement of the scientific principles and validity of the testing apparatus (see Attachment A), if the facility has an urinalysis testing apparatus; or
  - B. The report of the testing laboratory or facility, a copy of the methods and procedures used by the testing laboratory or facility, and a statement of the scientific principles and validity of the testing apparatus used by the laboratory or facility, if a laboratory or another facility is used.
- VI. STATISTICAL DATA:** All results obtained in the course of the Urinalysis Testing Program shall be entered on the computerized drug testing system.
- VII. REQUIRED PARTICIPATION IN PROFICIENCY TESTING:** Each facility shall enroll in the Urine Toxicology Proficiency Testing Service of the American Association of Bioanalysts, 205 West Levee, Brownsville, Texas 78520.

### **EMIT or DRI+ CEDIA Drug Detection System**

The EMIT (Enzyme Multiplied Immunoassay Technique) or DRI+ CEDIA (Cloned Enzyme Donor Immunoassay) Drug Detection System consists of instrumentation, accessories, and reagents for detecting drugs of abuse in body fluids. These tests were designed as a primary screening system to detect positive samples in a given population. A negative result is strong evidence that the drug in question is not present in excess of the Reagent detection limit.

The EMIT or DRI+ CEDIA Reagents are qualitative. They are not designed to measure the quantity of drug in a sample, but will distinguish a positive from a negative sample.

The EMIT or DRI+ CEDIA Reagents are based on a biochemical principle (homogenous enzyme immunoassay). EMIT or DRI+ CEDIA Reagents are utilized as quantitative for therapeutic drug monitoring, and semi-quantitative and qualitative results for drugs of abuse.

The EMIT or DRI+ CEDIA System is an automated analyzer for drug of abuse urine screening designed to perform all functions necessary for running EMIT or DRI+ CEDIA Reagents.

The reaction rate of the cut-off calibrator serves as the reference point for determining sample results. A sample is considered positive if its reaction rate is equal to or greater than that of the cut-off calibrator. Negative and high calibrator/controls are run to validate reagent and instrument performance. Urine samples are mixed with two reagents. The system automatically measures and mixes samples and reagents. Photometric absorbance readings are taken on reagent reactions. The system computer interprets operator input, processes reagent data, and interprets results.

### **Limitations**

- A. All reagents must be stored as directed. Storage conditions will affect the stability of the reagents, controls, and calibrator. Stability is optimal when all are stored refrigerated. Length of stability time diminishes as storage temperature increases.
- B. Urine samples may be collected in plastic or glass containers. If not tested within one day, it is recommended that urine samples be stored frozen. Samples not thus frozen may produce a "false negative;" However, in no event will the failure to freeze a sample result in a "false positive." The effect of urine preservatives has not been established; therefore, it is recommended that urine preservatives not be used.
- C. The reagent has not been designed for use with body fluids other than urine.
- D. The EMIT or DRI+ CEDIA Drug Detection Systems perform optimally when operated within a temperature range of 15-32 degrees C (59-90 degrees F). All performance claims are based on testing done in this temperature range. Temperatures outside this range may result in decreased reagent sensitivity.
- E. The EMIT or DRI+ CEDIA System is optimized for use with the EMIT or DRI+ CEDIA Reagents. Performance of the EMIT System with other reagents has not been established.

### **Critical Parameters**

#### **Reagents**

1. Temperature of the reagents should not exceed 32 degrees C (90 degrees F) for extended periods.
2. Discolored reagents should be discarded.
3. For each test, use reagent vials that have the same lot number and that have been stored under the same conditions.

#### **Instrumentation**

1. The performance of the instrument and reagents should be checked periodically by running the negative and high calibrator/control with the cut-off calibrator. The EMIT System solution should be filled up as needed.
2. At the beginning of each working day, several procedures are required to ensure proper operation of the instrument and accurate calibration and sample testing. The system solution requires sufficient fill level, and the system should be primed.
3. The EMIT System may be left on at all times. If there is a need to turn it off, the operator would then need to wait until the cooling compartment is completely cooled. Then the system will indicate when ready.

#### **Materials**

Allow all samples stored in the freezer to completely thaw before use. The EMIT or DRI+ CEDIA System performs optimally when operated within a temperature range of 15-32 degrees C (59-90 degrees F).

### **Reliability**

EMIT and DRI+ CEDIA tests have been shown to be among the most consistently accurate drug testing methods in current use.

#### **EMIT**

The Centers for Disease Control in Atlanta, Georgia, conducted drug abuse proficiency testing surveys from 1972 to 1981. The surveys assessed the reliability of drug testing performed by different analytical methods in laboratories throughout the country.

In the most recently published data from the 1980 surveys, the percentages of correct results obtained with EMIT tests ranged from 97% (for amphetamines, barbiturates, morphine, and phencyclidine) to 99% (for cocaine and methadone). The percentages obtained with gas chromatography methods ranged from 95% to 99%, and with thin-layer chromatography, from 92% to 97%.

A study was performed for Syva by an independent laboratory using GC/MS for all samples parallel with the EMIT marijuana Assay. Analyzing 100 urine samples by both methods, the EMIT did not give a single false positive result. False negative results may occur due to the lower sensitivity of the EMIT tests than the GC/MS sensitivity. In legal cases, however, false negative is an error that is to the advantage of the accused.

### **CEDIA**

1. DRI+ and CEDIA Reagents are currently used by the largest reference lab in the country; the Federal Probation and Parole; Department of Defense; as well as numerous other state prisons, hospitals, drug courts, and treatment programs.
2. "All immunoassays (CEDIA, EMIT, RIA) performed equivalently for cocaine, opiates, and phencyclidine. The CEDIAs for all the major drugs of abuse are reliable and effective for large-volume urine screening programs." Reference: Cloned enzyme donor immunoassay (CEDIA) for drugs-of-abuse screening Armbruster D.A., Hubster E.C., Kaufman M.S., Ramon M.K. (1995) *Clinical Chemistry*, 41 (1), pp. 92-98.

### **Abstract**

1. **Background**

For analysis of urine samples during abstinence control for driving ability assessment (medical and psychological assessment, MPA), a reliable screening method for ethyl glucuronide and drugs of abuse (cannabinoids, opiates, cocaine, amphetamines, methadone, and benzodiazepines) is needed.

2. **Methods**

In this study CEDIA and DRI+ immunoassays were applied on a Thermo Fisher Scientific Indiko Plus analyzer, Precision and accuracy as well as sensitivity and specificity at the required cut-offs for the MPA were evaluated.

3. **Results**

The specificity was satisfactory and ranged from 91% for methamphetamine to 100% for opiates, cocaine metabolite, amphetamine, EDDP, and benzodiazepines. Moreover, sensitivity was 100% for all assays except for cannabinoids (91%).

4. **Conclusion**

The presented method can therefore be recommended for abstinence control.

Kohler, K.; Hammer, R.; Riedy, K.; Auwarter, V.; Neukamm, M. (2016, June 27). Evaluation of CEDIA and DRI Drugs of Abuse Immunoassays for Urine Screening on a Thermo Indiko Plus Analyzer, *Journal of Clinical Laboratory Analysis*, 31 (1).

"DRI Reagents are acceptable alternatives to EMIT Reagents for the analysis of amphetamines, cannabinoids, cocaine metabolite, opiates, and phencyclidine in urine on the Cobas Mira analyzer. Utilization of DRI Reagents for more than 12 months demonstrated the reliability of the reagents and allowed cost comparison." Reference: Broussard, LA.; Hanson, L. (1997, March 1). Evaluation of DRI enzyme immunoassays for drugs-of-abuse screening on the Cobas Mira, *Clin Lab Sci*. 10 (2), pp. 83-86.



### **Enzyme Immunoassay Case Law**

In its decision dated October 26, 1987, in the federal class action suit of Peranzo et al. v. Coughlin, et al., the Southern District of New York found that “with a 98+% rate of accuracy, the double EMIT testing as performed by DOCCS is sufficiently reliable so that the use of the results as evidence, even as the only evidence, in a disciplinary hearing does not offend due process.” The Court relied upon DOCCS’ record of 98.7% accuracy rate in proficiency testing with the American Association of Bioanalysts over the past four years.

There is no test method, including the EMIT method, that can offer 100% confidence in the accuracy of its results. This is because a very small number of urine samples can be expected to produce unusual results due to differences in their composition, handling, storage, or testing.

Syva is the only drug test manufacturer to express its product accuracy in statistical terms, and they are the only manufacturer to guarantee such a high level of confidence in the accuracy of its test results. Before they ship test kits from a newly-manufactured lot, their Quality Control Department uses the new product to test urine samples containing drug and samples containing no drugs. It commonly obtains correct results for more than 99% of the samples it tests.

Over-the-counter medication with very similar chemical structures may sometimes produce positive results for amphetamine. These medications are listed in the product literature.

# **EXHIBIT 5**

**510(k) SUBSTANTIAL EQUIVALENCE DETERMINATION  
DECISION SUMMARY  
ASSAY AND INSTRUMENT COMBINATION TEMPLATE**

**A. 510(k) Number:**

k110035

**B. Purpose for Submission:**

New device (analyzer and reagent)

**C. Measurand:**

Glucose

**D. Type of Test:**

Quantitative Glucose hexokinase (Glucose), photometric

**E. Applicant:**

Thermo Fisher Scientific Oy

**F. Proprietary and Established Names:**

Indiko Clinical Chemistry Analyzer

Indiko Glucose (HK)

**G. Regulatory Information:**

1. Regulation section:

21 CFR § 862.1345 - Glucose test system

21 CFR § 862.2160 - Discrete Photometric Chemistry Analyzer for Clinical Use

2. Classification:

Class II, I

3. Product code:

CFR Hexokinase, Glucose

JJE Analyzer, Chemistry (Photometric, Discrete), For Clinical Use

4. Panel:

Chemistry 75

**H. Intended Use:**

1. Intended use(s):

See indications for use below.

2. Indication(s) for use:

The Thermo Scientific Indiko Clinical Chemistry Analyzer is a fully automated random access analyzer used to measure a variety of analytes that may be adaptable to the analyzer depending on the reagent used.

The Indiko Glucose (HK) test system, is intended for *in vitro* diagnostic use in the quantitative determination of the glucose concentration in human plasma on the Indiko analyzer.

Glucose measurements are used in the diagnosis and treatment of carbohydrate metabolism disorders including diabetes mellitus, neonatal hypoglycemia, and idiopathic hypoglycemia, and of pancreatic islet cell carcinoma.

3. Special conditions for use statement(s):

For prescription use.

4. Special instrument requirements:

Indiko analyzer

**I. Device Description:**

The Indiko is automated random access discrete photometric analyzer, capable of performing up to 30 photometric tests at one time.

Samples are manually loaded onto a sample rack. The sample rack has an integrated barcode reader which allows cup/tube recognition. The barcode reader can read the following codes: code 128, USS Codabar, interleaved 2 of 5 and code 39 with check digit. Non-barcoded samples may also be assayed.

Reaction cells are discrete disposable (single use) multicell cuvettes with 10 reaction measurement cells in a row. There is an on-board capacity of 36 multicell cuvettes (equal to 360 reaction cells), with continuous loading capability, typically 2 hours walk-away time. The quality of the reaction cells is checked at the start of the routine work automatically. The measurements are performed at 37°C.

Reagents are liquid. The reagent bottles are placed on the reagent/sample disk, which holds maximum 30 positions. The reagent/sample disk is refrigerated.

The operating system works with Windows ® XP. The user interface software is graphical. The data input can be done online or by touch screen or mouse or keyboard.

The Glucose (HK) method consists of two reagents. Reagent A (buffer) contains 100 mmol/L Tris buffer (pH7.8) 2.1 mmol/L ATP, 2.1 mmol/L NAD, 4 mmol/L  $Mg^{2+}$  and <0.1%  $NaN_3$ . Reagent B (Enzyme) contains 4 mmol/L  $Mg^{2+}$ , >7.5 kU/L Hexokinase, >7.5 kU/L G-6-P-DH and <0.1%  $NaN_3$ . Reagent A is provided in 16 mL bottles and Reagent B in 4 mL bottles.

#### J. Substantial Equivalence Information:

1. Predicate device name(s):

Thermo Fisher DPC T60i Clinical Chemistry Analyzer  
Thermo Fisher DPC T60i Glucose (HK) assay

2. Predicate 510(k) number(s):

k061107

3. Comparison with predicate:

The similarities and differences of the analyzer and glucose reagent are summarized below:

Attribute	Indiko Analyzer	DPC T60i Analyzer
Indications for use	Is a fully automated random access analyzer used to measure a variety of analytes that may be adaptable to the analyzer depending on the reagent used.	Same
Maximum Throughput	200 tests per hour	600 tests per hour
Methodologies	Photometric	Photometric, Potentiometric
Sample Containers Supported	0.5 ml cups, 2 ml cups, 5 ml tubes (13 x 75 mm), 7 ml tubes (13 * 100 mm), 10 ml tubes (16 x 100 mm)	0.5 ml cups, 2 ml cups, 5 ml tubes (13 x 75 mm), 7 ml tubes (13 * 100 mm), 10 ml tubes (16 x 100 mm)



Attribute	Indiko Analyzer	DPC T60i Analyzer
STAT Capability	Yes	Yes
Sample ID Input	Manual or Barcode	Manual or Barcode
Reagent Barcode Reader	Yes	Yes
Incubator Positions	9 positions * 10 cells = 90 cells	20 positions * 12 cells = 240 cells
Load Assay Protocol Information	User Configurable Electronic file transfer Upload for 2D label	User Configurable
Calibration	Programmable	Programmable
Operator Interface	Touch screen and keyboard	Touch screen and keyboard
Test Modes	Sample orientated, STAT	Random, STAT
On-Analyzer Sample Capacity	Flexible from 9 up 45 samples	6 segments * 14 positions/segment = 84 samples
<b>Attribute</b>	<b>Glucose (HK) for the Indiko analyzer</b>	<b>Glucose (HK) for the T60 analyzer</b>
Indications for use	Used for the diagnosis and treatment of carbohydrate metabolism disorders including diabetes mellitus, neonatal hypoglycemia, and idiopathic hypoglycemia, and of pancreatic islet cell carcinoma.	Same
Reagent composition	<b>Reagent A: Buffer</b> Tris buffer (pH 7.8) 100 mmol/L ATP 2.1 mmol/L NAD 2.1 mmol/L Mg <sup>2+</sup> 4 mmol/L NaN <sub>3</sub> < 0.1 % <b>Reagent B: Enzyme</b> Mg <sup>2+</sup> 4 mmol/L Hexokinase > 7.5 kU/L G-6-P-DH > 7.5 kU/L NaN <sub>3</sub> < 0.1 %	Same
Sample type	Plasma (Li-heparin)	Serum or plasma (Li-heparin)
Measuring range	5 – 720 mg/dL	5 – 720 mg/dL Extended measuring range after secondary dilution: 5 – 2160 mg/dL

**K. Standard/Guidance Document Referenced (if applicable):**

- Evaluation of Precision Performance of Quantitative Measurement Methods; Approved Guideline- Second Edition (CLSI EP5-A2)
- Evaluation of the Linearity of Quantitative Measurement Procedures: A Statistical Approach; Approved Guideline (CLSI EP6-A)
- Method Comparison and Bias Estimation Using Patient Samples; Approved Guideline- Second Edition (CLSI EP9-A2)
- Interference Testing in Clinical Chemistry; Approved Guideline, Second Edition (CLSI EP7-A2)

**L. Test Principle:**

Glucose is phosphorylated by ATP, in a reaction catalyzed by hexokinase (HK). The glucose-6-phosphate (G-6-P) formed is oxidized to 6-phosphogluconate (6-PG) by glucose-6-phosphate dehydrogenase (G-6-P-DH). In this same reaction an equimolar amount of NAD is reduced to NADH, with a resulting increase in absorbance at 340 nm. The increased absorbance is directly proportional to the amount of glucose in the sample.

**M. Performance Characteristics (if/when applicable):**

1. Analytical performance:

*a. Precision/Reproducibility:*

A precision study was performed using CLSI document EP5-A2 as guideline. Three levels of commercial control material were evaluated on three Indiko Clinical Chemistry Analyzers using three glucose reagent lots, with two runs per day and two replicates per run over 20 days. The total number of measurements was  $n = 84$ . The results are summarized below.

	Low mean 57 mg/dL		Middle mean 86 mg/dL		High mean 269 mg/dL	
	SD	CV%	SD	CV%	SD	CV%
Repeatability (Within Run)	0.6	1.0	0.5	0.6	2.0	0.8
Between run	0.3	0.6	1.0	1.1	1.6	0.6
Within Device (Total)	1.0	1.8	1.6	1.8	4.1	1.5

A second precision study was performed using lithium heparin samples at three glucose levels. CLSI document EP5-A2 was used as a guideline; however the study was performed for 10 days. Samples were evaluated on one Indiko analyzer, with two runs per day and two replicates per run, with the number of measurements being  $n = 40$ . The results are summarized below.

	Low mean 53 mg/dL		Middle mean 123 mg/dL		High mean 203 mg/dL	
	SD	CV%	SD	CV%	SD	CV%
Repeatability (Within Run)	0.3	0.7	0.7	0.6	1.7	0.8
Between run	0.4	0.8	1.5	1.2	1.3	0.6
Within Device (Total)	0.8	1.6	1.8	1.5	3.2	1.5

*b. Linearity/assay reportable range:*

A linearity study across the claimed assay range 5-720 mg/dL was performed by preparing two plasma samples with very low and high glucose concentrations. The low and high pools were mixed in different proportions to create nine dilutions. Eleven samples in all were assayed in triplicate

Data was analyzed using 1st, 2nd, and 3rd order least square regressions according to CLSI protocol EP6-A. Based on the analysis the sponsor determined that second order regression was the best fit and yielded the following equation:

$$\text{Second order: } y = -4.075\text{E-}05x^2 + 1.028x - 0.03861, \text{ Std. Error } 4.242$$

Based on these results, the sponsor claims that the assay is linear from 5-720 mg/dL

*c. Traceability, Stability, Expected values (controls, calibrators, or methods):*

The calibrator (sCal) and multi-analyte controls (Nortrol and Abtrol) were previously cleared under k061107.

The expected values and value assignment process were reviewed for this test system. The value sheet for sCal, Nortrol, and Abtrol will specify values for Indiko.

*d. Detection limit:*

A detection limit study was performed using CLSI EP17-A as a guide. The sponsor performed the following studies. Limit of Blank (LoB) was determined by running a blank sample (saline) 96 times total on two Indiko analyzers with two lots of Glucose (HK) reagent. The limit of detection (LoD) and limit of quantitation (LoQ) was determined by assaying 3 low glucose concentration plasma samples on two Indiko analyzers and two reagent lots over two days, for a total of 42 replicates each.

The sponsor states that the LoB represents the highest measurement result that is



likely to be observed for an analyte-free sample. LoB is equal to 0.54 mg/dL. The LoD/LoQ represents the lowest actual concentration in a sample that can be quantitatively determined. The LoD/LoQ is stated to be 0.54 mg/dL.

The claimed lower limit of the measuring range is 5 mg/dL. Glucose values <5 mg/dL are flagged "Test limit low" by the analyzer.

*e. Analytical specificity:*

Testing for endogenous interfering substances was based on CLSI EP-7A2. Testing was performed on a minimum of five concentrations for each potential interferent. Plasma samples with three glucose levels, low level 74-77 mg/dl, middle level 109-112 mg/dl and high level 271-278 mg/dl were used in the evaluation. Samples with the interferents were tested and compared to the same sample without the interferent (control).

The sponsor defined non-significant interference as the highest level tested that recovers within  $\pm 5\%$  of the control sample.

Based on the studies performed the results support the following claims:

Hemolysis: No interference found up to 1000 mg/dL of hemoglobin.

Bilirubin (conjugated): No interference found up to 47 mg/dL.

Bilirubin (unconjugated): No interference found up to 50 mg/dL.

Lipemia: No interference found up to 1000 mg/dL of Intralipid®.

The labeling refers users to information on other potentially interfering substances (Young, D.S. *Effect of Drugs on Clinical Laboratory Tests, Fifth Edition*, AACC Press, 2000).

*f. Assay cut-off:*

Not applicable

2. Comparison studies:

*a. Method comparison with predicate device:*

A method comparison study was performed using CLSI document EP9-A2 as a guide. One hundred and seventeen (117) lithium plasma samples were analyzed with the Indiko Glucose test system and the DPC T60 glucose test system. Of these samples, 101 were neat lithium plasma. Twelve (12) were spiked to create samples with high glucose and four (4) were diluted to create samples with very low glucose. The results are summarized below.

Deming regression	$y = 1.005x + 0.677$
Slope, 95% Confidence Interval	1.003 to 1.008
Intercept, 95% Confidence Interval (ng/mL)	0.197 to 1.157
Correlation Coefficient, r	1.00
N	117
Range (ng/mL)	6-700

*b. Matrix comparison:*

The device is intended for lithium heparin plasma only

3. Clinical studies:

*a. Clinical Sensitivity:*

Not applicable

*b. Clinical specificity:*

Not applicable

*c. Other clinical supportive data (when a. and b. are not applicable):*

Not applicable

4. Clinical cut-off:

Not applicable

5. Expected values/Reference range:

Expected values are based on literature. The labeling recommends that each laboratory verify the use of these values with the intended patient population.

Plasma (fasting)

Adults: 60 - 109 mg/dl (3.3. - 6.0 mmol/l)

Jacobs, D.S., DeMott, W.R. and Oxley, D.K., Laboratory Test Handbook 3rd Edition, 2004, LEXI-COMP, INC, Hudson (Cleveland), OH: p. 644



**N. Instrument Name:**

Indiko Clinical Chemistry Analyzer

**O. System Descriptions:**

1. Modes of Operation:

Benchtop fully automated random access analyzer

2. Software:

FDA has reviewed applicant's Hazard Analysis and software development processes for this line of product types:

Yes ☒ or No ☐

The software documentation provided demonstrates the Indiko Analyzer was designed under adequate software lifecycle processes.

3. Specimen Identification:

Barcode or manual entry

4. Specimen Sampling and Handling:

Samples can be manually loaded into sample rack for direct sampling from specimen tube or sample cup.

5. Calibration:

On-board programmable calibration.

6. Quality Control:

The software contains a quality control program that evaluates control results and determines if they are within specified acceptable limits.

Analyzer labeling recommends that quality control be performed daily. Users are instructed to follow local, state and federal regulations with regard to the frequency of running quality control.

**P. Other Supportive Instrument Performance Characteristics Data Not Covered In The “Performance Characteristics” Section above:**

EMC testing was evaluated and certified by SGS Fimko Ltd. and a letter of attestation was issued to Thermo Fisher on June 2, 2010.

**Q. Proposed Labeling:**

The labeling is sufficient and it satisfies the requirements of 21 CFR Part 809.10.

**R. Conclusion:**

The submitted information in this premarket notification is complete and supports a substantial equivalence decision.

# **EXHIBIT 6**

**510(k) SUBSTANTIAL EQUIVALENCE DETERMINATION  
DECISION SUMMARY  
ASSAY ONLY TEMPLATE**

**A. 510(k) Number:**

k163101

**B. Purpose for Submission:**

New device

**C. Measurand:**

Buprenorphine

**D. Type of Test:**

Qualitative and semi-quantitative immunoassay

**E. Applicant:**

Microgenics Corporation

**F. Proprietary and Established Names:**

CEDIA Buprenorphine II Assay  
CEDIA Buprenorphine II Calibrators  
CEDIA Negative Calibrator II  
CEDIA Buprenorphine II Control Set

**G. Regulatory Information:**

Regulation section	Classification	Product Code	Panel
21 CFR 862.3650	Class II	DJG	Toxicology (91)
21 CFR 862.3200	Class II	DLJ	Toxicology (91)
21 CFR 862.3280	Class I, reserved	LAS	Toxicology (91)

**H. Intended Use:**

1. Intended use(s):

Refer to Indications for Use below

2. Indication(s) for use:

The CEDIA® Buprenorphine II Assay is a homogeneous enzyme immunoassay for the qualitative and/or semiquantitative determination for the presence of buprenorphine and its metabolites in human urine at a cut-off concentration of 10 ng/mL. The assay is intended to be used in laboratories and provides a simple and rapid analytical screening procedure to detect buprenorphine in human urine. The assay is designed for use with a number of clinical chemistry analyzers.

The semi-quantitative mode is for the purpose of enabling laboratories to determine an appropriate dilution of the specimen for confirmation by a confirmatory method such as LC-MS/MS or permitting laboratories to establish quality control procedures.

The assay provides only a preliminary analytical test result. A more specific alternative chemical method must be used to obtain a confirmed analytical result. Gas chromatography/ mass spectrometry (GC/MS) or Liquid chromatography/ mass spectrometry (LC-MS/MS) is the preferred confirmatory method.

Clinical and professional judgment should be applied to any drug of abuse test result, particularly when preliminary results are used. For In Vitro Diagnostic Use Only.

CEDIA® Buprenorphine II Calibrators:

The CEDIA® Buprenorphine II calibrators and CEDIA Negative Calibrator II are intended for the calibration of the CEDIA® Buprenorphine II Assay in human urine. For In Vitro Diagnostic Use Only.

CEDIA® Buprenorphine II Control Set:

The CEDIA® Buprenorphine II controls are used to validate the CEDIA® Buprenorphine II Assay calibration in human urine. For In Vitro Diagnostic Use Only.

3. Special conditions for use statement(s):

For prescription use only.

4. Special instrument requirements:

The CEDIA Buprenorphine II Assay is intended for use on automated clinical analyzers capable of maintaining a constant temperature, pipetting, mixing reagents, measuring enzymatic rates at 570 nm and timing the reaction accurately can be used to perform this immunoassay. All performance data was collected on a Beckman Coulter AU680 analyzer.

**I. Device Description:**

CEDIA® Buprenorphine II Assay is supplied as two liquid and two lyophilized reagent



kit homogeneous enzyme immunoassay:

1 EA Reconstitution Buffer

Contains buffer salts, mouse monoclonal anti-buprenorphine derivative antibody 0.8 - 1.0 mg/L, stabilizer, and preservative.

1a EA Reagent

Contains 0.171 g/L Enzyme Acceptor, buffer salts and preservative.

2 ED Reconstitution Buffer

Contains buffer salts, stabilizers, and preservatives

2a ED Reagent

Contains 0.175 mg/L Enzyme Donor conjugated to buprenorphine derivative, 1.67 g/L chlorophenol red- $\beta$ -D-galactopyranoside, stabilizers, detergent and preservative.

The assay uses specific antibodies that can detect buprenorphine and its metabolites without significant cross-reactivity to other opiate compounds. In the assay, analyte in the sample competes with analyte conjugated to one inactive fragment of  $\beta$ -galactosidase for antibody binding site. If analyte is present in the sample, it binds to antibody, leaving the inactive enzyme fragments free to form active enzymes. If analyte is not present in the sample, antibody binds to analyte conjugated on the inactive fragment, inhibiting the reassociation of inactive  $\beta$ -galactosidase fragments, and no active enzyme is formed. The amount of active enzyme formed, and resultant absorbance change, is directly proportional to the amount of analyte present in the sample.

**J. Substantial Equivalence Information:**

1. Predicate device name(s):

Microgenics CEDIA Buprenorphine Assay

2. Predicate 510(k) number(s):

k040316

3. Comparison with predicate:

Similarities - Assay		
Item	Device	k040316 – Microgenics CEDIA Buprenorphine Assay
Intended Use	Same	Detection of buprenorphine in human urine
Methodology	Same	CEDIA (Cloned Enzyme

Similarities - Assay		
Item	Device	k040316 – Microgenics CEDIA Buprenorphine Assay
		Donor Immunoassay)
Intended Users	Same	Prescription users only
Reagents Form	Same	Lyophilized (requiring reconstitution) and liquid ready to use
Antibody	Same	Mouse monoclonal
Storage	Same	2 – 8° C until expiration date
Target Analyte	Same	Buprenorphine

Differences - Assay		
Item	Device	Predicate
Cutoff	10 ng/mL	5 ng/mL

Similarities – Calibrators		
Item	Device	Predicate
Form	Same	Liquid – ready to use
Storage	Same	2 – 8° C until expiration date

Differences - Calibrators		
Item	Device	Predicate
Calibrator Name	CEDIA® Buprenorphine II calibrators and controls	CEDIA® Buprenorphine calibrators and controls
Calibrator Levels	0, 10, 20, 50, 100 ng/mL	0, 5, 20, 50, 75 ng/mL

Similarities – Controls		
Item	Device	Predicate
Form	Same	Liquid – ready to use
Storage	Same	2 – 8° C until expiration date

Differences - Controls		
Item	Device	Predicate
Control Names	CEDIA® Buprenorphine II controls	CEDIA® Buprenorphine controls
Control Levels	7.5 and 12.5 ng/mL	3 and 7 ng/mL
Form	Same	Liquid – ready to use
Storage	Same	2 – 8° C until expiration date

**K. Standard/Guidance Document Referenced (if applicable):**

- CLSI EP05-A3 - Evaluation of Precision of Quantitative Measurement Procedures; Approved Guideline - Third Edition.
- CLSI EP06-A- Evaluation of the Linearity of Quantitative Measurement Procedures: A Statistical Approach; Approved Guideline.
- CLSI EP07-A2 - Interference Testing In Clinical Chemistry; Approved Guideline - Second Edition.
- CLSI EP09-A3 - Measurement Procedure Comparison and Bias Estimation Using Patient Samples; Approved Guideline – Third Edition.
- CLSI EP25-A- Evaluation of Stability of In Vitro Diagnostic Reagents; Approved Guideline.

**L. Test Principle:**

CEDIA® technology uses recombinant DNA technology to produce a unique homogeneous enzyme immunoassay system. The assay is based on the bacterial enzyme  $\beta$ -galactosidase, which has been genetically engineered into two inactive fragments. These fragments spontaneously re-associate to form fully active enzymes that, in the assay format, cleave a substrate. This generates a color change that can be measured spectrophotometrically.

**M. Performance Characteristics (if/when applicable):**

1. Analytical performance:

*a. Precision/Reproducibility:*

Precision was evaluated using CLSI Guideline EP05-A3 as a guideline, at one site with one analyzer, two operators, and two lots of reagents, calibrators and controls. Testing was carried out for 20 days with two runs per day, at least two hours apart and two replicates per run in both Qualitative and Semi-quantitative modes, giving a total of 80 determinants (n = 80). Drug-free negative urine was spiked with buprenorphine analyte to final concentrations of -100%, -75%,

-50%, -25%, below cutoff and +25%, +50%, +75% and +100%, above cutoff, and the concentrations were confirmed by LC-MS/MS. Results are summarized below:

Qualitative Mode – Lot 1

% of Cutoff	Target Conc. (ng/mL)	Measured Conc. (ng/mL)	# of determinants	# Negative/ # Positive
-100	0	0	80	80/0
-75	2.5	2.99	80	80/0
-50	5	5.31	80	80/0
-25	7.5	7.63	80	80/0
100	10	10.99	80	18/62
+25	12.5	12.97	80	0/80
+50	15	15.05	80	0/80
+75	17.5	18.92	80	0/80
+100	20	20.38	80	0/80

Qualitative Mode – Lot 2

% of Cutoff	Target Conc. (ng/mL)	Measured Conc. (ng/mL)	# of determinants	# Negative/ # Positive
-100	0	0	80	80/0
-75	2.5	2.99	80	80/0
-50	5	5.31	80	80/0
-25	7.5	7.63	80	80/0
100	10	10.99	80	27/53
+25	12.5	12.97	80	0/80
+50	15	15.05	80	0/80
+75	17.5	18.92	80	0/80
+100	20	20.38	80	0/80

Semi-Quantitative Mode – Lot 1

% of Cutoff	Target Conc. (ng/mL)	Measured Conc. (ng/mL)	# of determinants	# Negative/ # Positive
-100	0	0	80	80/0
-75	2.5	2.99	80	80/0
-50	5	5.31	80	80/0
-25	7.5	7.63	80	80/0
100	10	10.99	80	7/73
+25	12.5	12.97	80	0/80
+50	15	15.05	80	0/80
+75	17.5	18.92	80	0/80
+100	20	20.38	80	0/80

Semi-Quantitative Mode – Lot 2

% of Cutoff	Target Conc. (ng/mL)	Measured Conc. (ng/mL)	# of determinants	# Negative/ # Positive
-100	0	0	80	80/0
-75	2.5	2.99	80	80/0
-50	5	5.31	80	80/0
-25	7.5	7.63	80	80/0
100	10	10.99	80	35/45
+25	12.5	12.97	80	0/80
+50	15	15.05	80	0/80
+75	17.5	18.92	80	0/80
+100	20	20.38	80	0/80

*b. Linearity/assay reportable range:*

The sponsor performed a spike recovery study using two lots each of reagent, calibrators and controls and analyzed concentrations of 7.5, 10, and 12.5 ng/mL. Samples were analyzed in semi-quantitative mode in replicates of 5. Recoveries ranged from 96.6% - 105.3%.

The sponsor also performed a linearity study using two lots each of reagent, calibrators and controls and analyzed concentrations of 0, 5, 10, 20, 30, 40, 50, 60, 70, 80, 90, and 100 ng/mL. Samples were analyzed in semi-quantitative mode in replicates of 5. Recoveries ranged from a low of 98.3% to a high of 119.8%. Recovery at the claimed cutoff of 10 ng/mL was 109.7%.

*c. Traceability, Stability, Expected values (controls, calibrators, or methods):*

**Traceability:** The primary calibrators and controls are traceable to a commercially available Buprenorphine drug stock with a starting concentration of 1 mg/mL.

**Value Assignment:** The nominal values for calibrators are 0, 10, 20, 50 and 100 ng/mL, and 7.5 and 12.5 ng/mL for controls. All values are verified by LC-MS/MS.

The sponsor's protocols and acceptance criteria were reviewed and found to be acceptable.

**Stability:** Real time and accelerated stability studies for both controls and calibrators were conducted. Protocols and acceptance criteria were reviewed and found to be acceptable. The results support the manufacturer's stability claims of 60 days for an opened vial and 18 months for an unopened vial for both calibrators and controls. Real time studies are ongoing.



d. *Detection limit:*

Not applicable.

e. *Analytical specificity:*

Buprenorphine and metabolites

To evaluate cross-reactivity, drug-free urine was spiked with norbuprenorphine, buprenorphine- $\beta$ -D-glucuronide and norbuprenorphine- $\beta$ -D glucuronide. Percent cross-reactivity was calculated as (Cut-off concentration / Lowest concentration of cross reactant that gives a positive result) x 100. Results are summarized below:

Compound	Lowest concentration producing a positive result (ng/mL)	Percent cross-reactivity
Buprenorphine	10	100
Norbuprenorphine	8	125
Buprenorphine- $\beta$ -D-glucuronide	13	77
Norbuprenorphine- $\beta$ -D-glucuronide	10	100

Opiates and Structurally Related Compounds

The following opiates and structurally related compounds were analyzed and found to have a cross-reactivity of <0.01%.

Compound	Highest Concentration Tested	Result
6-Acetyl morphine	100,000	Negative
Diacetylmorphine (Heroin)	100,000	Negative
Codeine	100,000	Negative
Dextromethorphan	100,000	Negative
Dihydrocodeine	100,000	Negative
EDDP (2-ethylidene-1,5-dimethyl-3,3-diphenylpyrrolidine)	100,000	Negative
EMDP ((2-Ethyl-5-methyl-3,3-	100,000	Negative

Compound	Highest Concentration Tested	Result
diphenylpyrroline)		
Fentanyl	100,000	Negative
Hydrocodone	100,000	Negative
Hydromorphone	100,000	Negative

The following opiates and structurally related compounds were analyzed and found to have a cross-reactivity of <0.1%.

Compound	Highest Concentration Tested	Result
Hydromorphone-β-Dglucuronide	10,000	Negative
Oxymorphone-β-Dglucuronide	10,000	Negative

#### Structurally unrelated compounds

Interference from structurally unrelated compounds was evaluated by spiking these compounds into urine samples containing near cutoff negative (7.5 ng/mL) and near cutoff positive (12.5 ng/mL) concentrations of buprenorphine. The compounds listed in the table below did not cause any positive or negative interference at the concentrations shown:

Compound	Concentration tested
Acetaminophen	500,000
Acetylsalicylic acid	500,000
Amitriptyline	50,000
Amoxicillin	100,000
Amphetamine	1,000,000
Amisulpride	100,000
Benzoyllecgonine	1,000,000
Caffeine	100,000
Carbamazepine	100,000
Chlorpromazine	100,000
Clomipramine	25,000
Chloroquine	100,000
Cimetidine	500,000
Desipramine	10,000
Doxepine	25,000
Diphenylhydramine	100,000
Ephedrine	100,000

Compound	Concentration tested
Fluoxetine	100,000
Fluphenazine	100,000
Hydroxychloroquine	100,000
Ibuprofen	100,000
Imipramine	25,000
Maprotiline	100,000
Mitragynine	100,000
7-OH Mitragynine	10,000
Nalbuphine	100,000
Nortryptiline	50,000
Oxazepam	100,000
Phencyclidine	100,000
Phenobarbital	100,000
Ranitidine	500,000
Secobarbital	100,000
Sulpiride	100,000
Thioridazine	100,000
Trimipramine	25,000

#### Endogenous compounds

Potential interference from endogenous compounds was evaluated by spiking these compounds into urine samples containing near cutoff negative (7.5 ng/mL) and near cutoff positive (12.5 ng/mL) concentrations of buprenorphine. The compounds or conditions listed in the table below did not cause any positive or negative interference at the concentrations shown:

Compounds	Tested Conc. (mg/dL)
Negative Urine	0
Acetaminophen	10
Acetone	500
Acetylsalicylic Acid	10
Ascorbic Acid	150
Caffeine	10
Creatinine	400
Ethanol	10
Galactose	5
Glucose	1000
Hemoglobin	150
Human Serum Albumin	200
Ibuprophen	10
Oxalic acid	50

Compounds	Tested Conc. (mg/dL)
Riboflavin	3
Sodium Chloride	1000
Urea	1000

### Specific gravity and pH

Interference from specific gravity and pH was evaluated by adjusting the specific gravity and pH of samples with near cutoff negative (7.5 ng/mL) and near cutoff positive (12.5 ng/mL) concentrations of buprenorphine. The following specific gravity or pH levels did not cause any positive or negative interference:

Specific gravity of 1.002, 1.004, 1.008, 1.013, 1.016, 1.018, 1.022, 1.023, 1.025, and 1.030.

pH of 3, 4, 5, 6, 7, 8, 9, 10, and 11

#### *f. Assay cut-off:*

Analytical performance of the device around the claimed cutoff is described in precision section (1 a.) above.

## 2. Comparison studies:

### *a. Method comparison with predicate device:*

Candidate Device Results vs. stratified LC-MS/MS Values – Semi-quantitative

Candidate Device Results	<b>Negative</b> or less than half the cutoff concentration by LC-MS/MS analysis	<b>Near Cutoff Negative</b> (Between 50% below the cutoff and the cutoff concentration by LC-MS/MS analysis)	<b>Near Cutoff Positive</b> (Between the cutoff and 50% above the cutoff concentration by LC-MS/MS analysis)	<b>High Positive</b> (greater than 50% above the cutoff concentration by LC-MS/MS analysis)
Positive	43	4	5	45
Negative	50	6	0	0

LC-MS/MS values used to categorize samples in this table are based on the concentration of buprenorphine found in the sample.

% Agreement among positives is 50/50 = 100%

% Agreement among negatives is 56/103 = 54%

Candidate Device Results vs. stratified LC-MS/MS Values – Qualitative

Candidate Device Results	<b>Negative</b> or less than half the cutoff concentration by LC-MS/MS analysis	<b>Near Cutoff Negative</b> (Between 50% below the cutoff and the cutoff concentration by LC-MS/MS analysis)	<b>Near Cutoff Positive</b> (Between the cutoff and 50% above the cutoff concentration by LC-MS/MS analysis)	<b>High Positive</b> (greater than 50% above the cutoff concentration by LC-MS/MS analysis)
Positive	42	4	5	45
Negative	51	6	0	0

LC-MS/MS values used to categorize samples in this table are based on the concentration of buprenorphine found in the sample.

% Agreement among positives is 50/50 = 100%

% Agreement among negatives is 57/103 = 55%

Summary of discordant results

Sample ID	Qual	Semi-Quant (ng/mL)	Bup	NorBup	BupGlu	NorBup Gluc
51	Pos	10.08	<0.65*	2.27	1.96	6.18
52	Pos	10.02	<0.65*	0.69	3.15	6.84
53	Neg	10.42	<0.65*	1.08	7.89	1.82
54	Pos	11.59	<0.65*	1.09	5.67	5.54
55	Pos	10.40	<0.65*	3.27	2.54	7.92
56	Pos	16.36	<0.65*	4.02	7.46	3.73
57	Pos	17.31	<0.65*	3.28	10.67	3.09
58	Pos	19.82	<0.65*	5.03	10.91	2.05
59	Pos	18.73	<0.65*	3.10	9.09	6.59
60	Pos	22.63	<0.65*	4.18	8.30	7.34
61	Pos	18.95	<0.65*	1.96	9.90	9.90
62	Pos	26.11	<0.65*	4.36	10.87	6.92
63	Pos	24.99	<0.65*	5.26	8.41	9.01
64	Pos	24.91	<0.65*	3.86	23.19	<0.65*
65	Pos	20.87	<0.65*	1.44	14.06	14.06
66	Pos	23.21	<0.65*	2.23	25.24	2.50
67	Pos	30.27	<0.65*	4.42	8.82	16.84
68	Pos	31.35	<0.65*	16.52	9.41	5.47



Sample ID	Qual	Semi-Quant (ng/mL)	Bup	NorBup	BupGlu	NorBup Gluc
69	Pos	35.38	<0.65*	7.13	5.30	22.38
70	Pos	40.38	<0.65*	12.21	18.65	9.11
71	Pos	38.44	<0.65*	2.93	12.40	28.84
72	Pos	48.60	<0.65*	23.41	15.34	5.44
73	Pos	62.31	<0.65*	5.47	36.52	25.00
74	Pos	81.31	<0.65*	33.59	23.42	12.72
75	Pos	88.67	<0.65*	26.22	32.43	23.1
76	Pos	79.26	<0.65*	6.34	80.00	2.77
77	Pos	>100	<0.65*	8.63	56.89	46.95
78	Pos	>100	<0.65*	101.98	10.40	9.90
79	Pos	>100	<0.65*	7.91	26.43	144.00
80	Pos	>100	<0.65*	49.66	97.61	121.12
81	Pos	>100	<0.65*	<0.65*	145.72	394.81
82	Pos	>100	<0.65*	129.95	105.07	664.47
83	Pos	>100	0.81	32.14	39.52	59.14
84	Pos	63.54	0.86	7.41	29.46	31.38
85	Pos	20.48	0.90	5.42	11.54	<0.65*
86	Pos	>100	0.91	54.00	18.10	10.52
87	Pos	46.32	2.00	12.03	13.58	16.24
88	Pos	>100	2.00	6.83	193.42	131.65
89	Pos	>100	2.02	75.75	174.74	442.98
90	Pos	66.32	2.48	6.53	57.67	1.52
91	Pos	>100	3.63	80.26	733.7	624.02
92	Pos	>100	4.38	69.28	146.16	349.33
93	Pos	>100	4.45	59.03	55.01	17.31
100	Pos	>100	8.64	36.91	>1000**	224.42
101	Pos	>100	8.94	51.32	497.32	55.06
102	Pos	>100	5.22	35.13	85.99	22.24
103	Pos	77.36	6.60	147.58	195.67	40.28

Abbreviations: Bup – Buprenorphine, NorBup – Norbuprenorphine, BupGlu – Buprenorphine Glucuronide, NorBupGluc – Norbuprenorphine Glucuronide

\*0.65 ng/mL is the lower limit of quantitation for the buprenorphine, norbuprenorphine, buprenorphine-glucuronide and norbuprenorphine-glucuronide LC-MS/MS assays

\*\*1000 ng/mL is the upper limit of quantitation for the buprenorphine, norbuprenorphine, buprenorphine-glucuronide and norbuprenorphine-glucuronide LC-MS/MS assays.

*b. Matrix comparison:*

Not applicable. This assay is intended to be used with urine samples only.

3. Clinical studies:

*a. Clinical Sensitivity:*

Not applicable.

*b. Clinical specificity:*

Not applicable.

c. Other clinical supportive data (when a. and b. are not applicable):

Not applicable.

4. Clinical cut-off:

Not applicable.

5. Expected values/Reference range:

Not applicable.

**N. Proposed Labeling:**

The labeling is sufficient and it satisfies the requirements of 21 CFR Part 809.10.

**O. Conclusion:**

The submitted information in this premarket notification is complete and supports a substantial equivalence decision.